Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1993

YORK RITE BODIES OF FREEMASONRY OF
SAVANNAH, ET AL.

PETITIONERS

vs.

BOARD OF EQUALIZATION OF CHATHAM COUNTY,
ET AL.

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA AND THE COURT OF APPEALS OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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46 pp

QUESTIONS PRESENTED

I. IS IT CONSTITUTIONALLY PERMISSIBLE FOR A STATE APPELLATE COURT TO GERRYMANDER OR ARRANGE ITS MEMBERS, EXCLUDING BY DISQUALIFICATION MEMBERS OF AN IDENTIFIABLE CLASS OR GROUP (AS A FRATERNAL ORDER) IN ORDER TO INSURE OR MAKE MORE PROBABLE A DESIRED JUDGMENT?

II. DID THE RECENT RASH OF ANTI-MASONIC SENTIMENT, FUELED IN LARGE PART BY THE HIGHLY PUBLICIZED SOUTHERN BAPTIST CONVENTION DEBATE, WHICH WAS BASED UPON A FALSE PREMISE AS TO THE MASONS, UNFAIRLY INFLUENCE THE "ARRANGEMENT" OF THE APPEALS COURT, AND ADVERSELY EFFECT THE JUDGMENT OF THE COURT OF APPEALS AND DENIAL OF CERTIORARI BY THE SUPREME COURT?

III. DID THE COURT OF APPEALS OF GEORGIA, AND SUBSEQUENTLY THE SUPREME COURT OF GEORGIA EXCEED ITS AUTHORITY AND LIMITATIONS UNDER O.C.G.A. SECTION 15-1-8 IN ITS DISQUALIFICATION OF REGULAR JUSTICES

AND JUDGES AND SUBSTITUTION OF SUPERIOR COURT JUDGES AND A SENIOR JUDGE UNDER O.C.G.A. SECTION 15-1-9.1?

IV. DID THIS ACTION BY THE GEORGIA APPEALS COURTS CAUSE HARMFUL ERROR OF CONSTITUTIONAL PROPORTIONS TO PETITIONERS?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT BELOW

Parties:

Thunderbolt Lodge No. 693, F&AM of Georgia, and York Rite Bodies of Freemasonry of Savannah, Georgia, Petitioners;

Board of Equalization of Chatham County, Georgia, and Chatham County Board of Tax Assessors, Respondents

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TABLE OF AUTHORITIES

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Mapp vs. State, 204 Ga.App. 647, 420 SE2d 615 (1992)

Massenburg vs. Grand Lodge of Georgia, 81 Ga. 212, 7 SE 636 (1888)

Mu Beta Chapter and House Corp vs. Davison, 192 Ga. 124, 14 SE2d 744 (1941)

Odom et al. vs. Langston, et al., 356 Mo. 1140, 205 SW2d 518 (1947)

Robinson vs. The State, 86 Ga.App. 375, 71 SE2d 677 (1952)

State vs. Sams, 210 SE2d 916, 75 A.L.R. 3rd 1017 (W.Va. 1975)

Thomas et al. vs. Northeast Georgia Council, Inc., Boy Scouts Of America, 241 Ga. 291, 244 SE2d 842 (1978)

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York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 261 Ga. 558, 408 SE2d 699 (1991)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 198 Ga.App. 147, 401 SE2d 30 (1991)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of A Equalization, 209 Ga.App. 359 (1993)

CONSTITUTIONAL PROVISIONS:

Constitution of the United States. Amendment XIV, Section I. (Appx. X)

Constitution of Georgia
Article I, Section I, Paragraph I.
(Appx. X)

Constitution of Georgia
Article I, Section I, Paragraph II.
(Appx X)

STATUTES:

O.C.G.A., Section 15-1-8. (Appx. P)

O.C.G.A., Section 15-1-9.1. (Appx. O)

O.C.G.A., Section 48-5-41 (a)(4).
(Appx. N)

OTHER AUTHORITIES:

Rule 18(c) of Court of Appeals of Georgia. (Appx. Q)

Rule 61 of the Supreme Court of the State of Georgia. (Appx. J)

OPINIONS BELOW

October 28, 1993, Denial of Motion for Reconsideration of Denial of Application for Certiorari (Appx. M)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 198 Ga.App. 147, 401 SE2d 30 (1990) (Appx. B)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 261 Ga. 558, 408 SE2d 699 (1991) (Appx. W)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 209 Ga.App. 359, 433 SE2d 299 (1993) (Appx. A)

STATEMENT OF JURISDICTION

To the Honorables the Chief Justice and Associate Justices of the Supreme Court of the United States.

This Court's jurisdiction is invoked under 28 U.S.C.A. Section 1257.

The Judgment of the Supreme Court of Georgia dated October 28, 1993, denied Petitioners' Motion for Reconsideration of the Court's denial of Application for Certiorari from the Court of Appeals of Georgia entered June 1, 1993, and this

Petition for Certiorari to the U. S. Supreme Court was filed within 90 days of that date, October 28, 1993.

York Rite Bodies of Freemasonry of Savannah, et al., Petitioners, herein pray that the Writ of Certiorari issue to review the Judgments of the Supreme Court of Georgia dated October 28, 1993, and September 20, 1991, as well as the Judgments of the Court of Appeals of Georgia dated November 27, 1990, and June 1, 1993. Review of the Judgments of both Courts is essential to show the apparently intentional arranging of the Judges and Justices of the Georgia Appellate Courts to insure Petitioners' loss of the case. This re-arrangment disqualified and excluded the regular Court members who were or had been members of Freemasonry.

This is an Application for the correction of errors arising out of the

official conduct of both Appellate Courts of Georgia, such conduct being the systematic disqualification of all regular Court members who were or had been members of Freemasonry, and substituting those disqualified with known non-Masons. This conduct was in excess of the authority allowed under O.C.G.A. Sec. 15-1-8, and was error of Constitutional proportions and fatal to Petitioners' cause. That those Judges and Justices disqualified were Masonically connected was not known by the Petitioners until after the denial of Motion of October 28, 1993, but the irregularity of the disqualifications was clearly raised on four subsequent occasions during the appeals process as being harmful error. Given the nature and content of the errors here alleged, all Petitioners' remedies in the Georgia Appellate Courts are exhausted.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The United States Constitution.
Amendment XIV, Section I.
(Appx. X)

The Georgia Constitution.
Article I, Section I, Paragraph I.
(Appx. X)

The Georgia Constitution.
Article I, Section I, Paragraph II.
(Appx X)

O.C.G.A., Section 15-1-8. (Appx. P)

O.C.G.A., Section 15-1-9.1. (Appx. O)

O.C.G.A., Section 48-5-41 (a)(4).
(Appx. N)

STATEMENT OF THE CASE

This latter denial of Equal Protection and due process became known for a certainty only after the denial by the Supreme Court of Georgia of the Application for Certiorari (October 5, 1993) and denial of Motion to Reconsider of October 28,

1993, although the irregularity of the Court's disqualifications and composition for review of this case was raised clearly on four occasions, and shown verbatim in the Appendix hereto.

In order to show the systematic disqualification of the Masons from the panel of both Appellate Courts and their replacements by non-masons, the affidavit of the Grand Secretary of the Grand Lodge of Georgia, F&AM, and of Counsel of Record hereof, is necessary to positively show that covert prejudice-bias occasioned the disqualification of the Masonically connected members of the Courts and their replacement by Non-masons. This we assert, when known, is the unconstitutional activity complained of, even if the Judges and Justices of the Courts are permitted under Georgia law to recuse or disqualify

without limitation under O.C.G.A. Sec. 15-1-8 and O.C.G.A. Sec. 15-1-9.1.

This question is not raised here for the first time; it was first raised in the Motion for Rehearing dated December 6, 1990, (See Appx. D) following transfer from the Supreme Court of Georgia to the Georgia Court of Appeals on January 11, 1990, in which case six of the nine regular judges of the Court of Appeals were "disqualified," and replaced by five Superior Court Judges and one Senior Appeals Court Judge, where a majority of that Court, consisting of two regular Court judges and four of the Superior Court judges affirmed the trial judge in his judgment against these Appellants, after a delay in the Court of about ten and one-half months. A strong and factually accurate dissenting opinion was written.

It was again raised in the January 1991, Application for Certiorari in the Supreme Court of Georgia (See Appx. E) following a denial by the Court of Appeals of the Motion for Rehearing. The Writ of Certiorari was granted and two Justices disqualified, (Appx. R) (substituted by Superior Court Judges (Appx. S). The Supreme Court reversed the Court of Appeals on other grounds, and remanded the case for a more thorough evidentiary hearing. The question of "irregularity" of the Court's composition was not addressed by the Supreme Court.

After completion of the evidence, following the remand, the trial judge (same trial judge) rendered judgment in favor of Appellants on October 2, 1992 (Appx. T). The Tax Assessor appealed to the Court of Appeals of Georgia; these Appellants (Appellees there) filed their

response brief, making motion to transfer, or to certify the case to the Supreme Court of Georgia for review, due to the denial of equal protection of the law, that of unequal treatment by the Assessor, of which the trial judge obviously took notice, based upon the evidence. This Motion and Prayer was avoided or denied by the Court of Appeals.

On June 1, 1993, the trial court was reversed by a three judge panel of the Court of Appeals of Georgia, in the face of the well established rule of law in Georgia that "findings of trial courts in non-jury trials shall not be set aside unless clearly erroneous" and then finding as a basis for its judgment stated; "these findings are not supported by <u>any</u> evidence and are therefore clearly erroneous." (Emph. ours) <u>York Rite et al. v. Board of</u>

Equalization, 209 Ga. App. 359, 433 SE2d 299 (1993). (Appx. A)

On June 7, 1993, these Appellants filed their Motion for Rehearing (Reconsideration) and for full bench review to the Court of Appeals, which was avoided or denied by the Court, in its denial of the Motion to Reconsider dated July 8, 1993 (Appx. F).

The question of possible bias or prejudice in the composition of the Court which we asserted was at a minimum irregular, was again raised in the Appellants Application for Certiorari to the Supreme Court of Georgia of July 29, 1993 (Appx. G). Without comment the Supreme Court denied the Application for Certiorari. "All the Justice concur except Benham and Carley J.J. disqualified."

The question of the Court's composition was for the fourth time clearly

raised in the Motion for Reconsideration of Denial Petition for Certiorari and Full Bench Decision (Appx. H). The Supreme Court of Georgia was again asked to review this question. The Court again denied the Motion, with Benham and Carley being again disqualified.

Also, filed along with the Application for Certiorari was a Motion to Stay Remittitur (Appx. I), Notice of Intent to Petition the Supreme Court of the United States for Writ of Certiorari, pursuant to Rule 61 of the Supreme Court of Georgia, (Appx. J) in which we charge violation of certain constitutional guarantees involving the large number of judicial disqualifications as adversely affecting those guarantees.

Thus, the Court of Appeals of Georgia and the Supreme Court of Georgia had an abundance of notice of the seriousness and

importance of the question of judicial qualifications, and ample opportunity to address the question, but did not do so, to the detriment of these Movants and the fraternal class of which they are a part.

At the outset, when the irregularity of the Court's composition was first questioned, it was necessarily based on assumption and speculation, and it was suggested by Appellants that even the "appearance" of irregularity on the Court was to be avoided so that confidence in our judiciary would not be eroded. At no time did the Court address that issue or make any comment about it.

However, <u>what</u> happened is no longer speculation or assumption; the <u>why</u> it was systematically done through the October 28, 1993, Denial of Motion for Reconsideration, is still unanswered, but we think the inescapable conclusion is that the

disqualifications were engineered; that it was done with prejudice or extreme anti-masonic sentiment which is the same thing, intended to essentially guarantee a decision by the Court against the freemasons. It cannot be reasonably considered that the arrangement of the Court was mere coincidence or happenstance.

On January 11, 1990, the Supreme Court, without comment, transferred this case to the Court of Appeals of Georgia; five days less than ten months later, the Court issued its order designating five Superior Court Judges and a Senior Appeals Court Judge, Arnold Shulman, to replace the six regular judges who were disqualified, and announced the Court's composition. Copy of the Court's order of October 22, 1990, referred to above, was not sent to the parties and did not mention "disqualifications" in that instrument or

give any reason for the action (Appx. C), or that six of the regular Court members had been disqualified. This was not disclosed or known until the judgment of the Court of Appeals of November 27, 1990, was entered (198 Ga.App. 147). Oral argument was denied although timely requested. Motion for Rehearing was denied (Appx. K).

THESE SIX DISQUALIFIED JUDGES WERE, OR HAD PREVIOUSLY BEEN MEMBERS OF MASONIC LODGES IN GEORGIA.

THE FIVE SUPERIOR COURT JUDGES AND THE SENIOR APPEALS COURT JUDGE APPOINTED TO SIT IN THE PLACE OF THOSE DISQUALIFIED WERE ALL NON-MASONS.

During the year 1990 when this case was transferred by the Supreme Court to the Court of Appeals of Georgia, the duly elected and serving Judges of the Court of Appeals of Georgia were:

GEORGE H. CARLEY (Master Mason, Pythagorus Lodge No. 41, Decatur) DISQUALIFIED

BRASWELL D. DEEN JR. (Master Mason, Bacon Lodge No. 56, Alma, demit, 1978) DISQUALIFIED

WILLIAM LEROY MCMURRAY JR. (Fellowcraft Mason, Washington Lodge No. 19, Cuthbert, demit, 1964) DISQUALIFIED

HAROLD R. BANKE (Fellowcraft Mason, Forest Park Lodge No. 399, Atlanta) DISQUALIFIED

*A. W. BIRDSONG (Entered Apprentice Mason, Union Lodge No. 28, LaGrange)

JOHN W. SOGNIER (Master Mason, Landrum Lodge No. 48, Savannah) DISQUALIFIED

MARION T. POPE JR. (Master Mason, Canton Lodge No. 77, demit, 1989) DISQUALIFIED

DOROTHY TOTH BEASLEY (Non-Mason)

CLARENCE COOPER (Non-Mason)

Judges who sat in place of those disqualified were:

WILLIAM J. SMITH (Non-Mason) Superior Ct., Chattahoochee

K. DAWSON JACKSON (Non-Mason)
Superior Ct., Gwinnett

THOMAS DAY WILCOX (Non-Mason)
Superior Ct., Macon

ROBERT G. WALTHER (Non-Mason)
Superior Ct., Rome

DANIEL M. COURSEY JR. (Non-Mason)
Superior Court, Stone Mountain

ARNOLD SHULMAN (Non-Mason), Sr.
Judge Ct. of App.)

*Please note that Judge A. W. Birdsong, a regular member of the Court, and who wrote the dissenting opinion joined Masonry (many years ago), was initiated as an Entered Apprentice but proceeded no further in the Order. If he were asked, "Are you a Mason?", his answer "No" would be truthful but he obviously knew enough about Masonary and its quiet benevolent works to write the dissenting opinion which more accurately states the truth of the matter than that of the majority. The majority opinion in that judgment was based upon inaccuracies of fact not stated

anywhere in the evidence before that Court, the basis of the majority opinion was obviously grounded upon an erroneous predisposition or prejudgment of the facts.

It cannot be stated for a certainty why "Bell and Benham, J. J. disqualified" (Richard Bell and Robert Benham) on the grant of the Application of Certiorari in April of 1991, the data being unavailable to us. However, it is known that in the denial of Certiorari and the Motion for Reconsideration of October 5, (Appx. L) and October 28, 1993 (Appx. M), Justice Benham was again disqualified along with Justice Carley, a known Mason, who had moved up from the Court of Appeals to the Supreme Court of Georgia in March of 1993. It is fair to assume Justice Benham is in some way masonically connected.

The sitting members of the Supreme Court of Georgia when the Application for

Writ of Certiorari of July 29, 1993, and its denial of October 8, 1993, and denial of Motion to Reconsider of October 28, 1993, were all non-masons with the known exception of Justice George H. Carley, and the possible exception of Justice Robert Benham, both of whom were disqualified in those decisions (Appx. L and Appx. M).

The three Judge panel of the Court of Appeals of Georgia which reversed the trial court's judgment of October 2, 1993, (Appx. A) are all known to be non-masons (Appx. B). They were: Edward H. Johnson, G. Alan Blackburn, and J. D. Smith. Judge Frank M. Hull, Atlanta Judicial Circuit, and Judge Michael Stoddard, Cobb Judicial Circuit, who were substituted for "Benham and Carley disqualified" in denial of the Certiorari and Motion to Reconsider in October 1993, are known non-masons (Appx. U).

The cases arose O.C.G.A. Sec. 48-5-41(a)(4) (Appx. N).

REASONS FOR GRANTING THE WRIT

Can there be any legal or ethical grounds, or reasons sufficient to justify the exclusion or disqualification of all the known Masons on an Appeals Court Panel where the case involves taxability of Masonic property under a valid state statute?

We strongly assert there is not. Nor would it be valid or reasonable or constitutionally permissible if it involved the person of an individual Mason, or his reputation, or that of the Masonic Order itself.

There is no bond or covenant between Masons whether commoner or a Judge, which would cause them to favor another Mason, or to protect or cover him in wrong doing, but to the contrary; there is no bond or covenant between Masons whether commoner or a Judge, which would encourage bias in the

individual on behalf of a masonic lodge, an individual, or the entire body of Masonry, if the act or goal of the Movant was immoral or unethical, wrong or unjust. The principals taught and insisted upon in Masonry do not condone lack of integrity, deception or dishonesty of any sort, in fact it condemns and sanctions it. Only a very small fraction of the Masonic membership in Georgia (and elsewhere) are ever subjected to disciplinary action for wrong doing; if all the groups or classes of people in the country were as law abiding or caring as the Masons, crime would not be a problem in America. But being a Mason does not <u>cause</u> this phenomena, but rather the sincere belief in the principles it (also) teaches, is the cause, whether Mason or not.

And, having reached the pinnacle of the law profession as a Judge, and how much

less-so an Appellate Judge or Justice, can it be credibly asserted that such Judge brings along a bias in favor of Masonry, because he is or has been one; or a bias in favor of the Baptist Church because he is a Baptist or his mother was; or the Boy Scouts because he was one, or was a Scout Master for them. (Thomas vs. Northeast Georgia Council Inc., Boy Scouts of America, 241 Ga. 291) or a bias in favor of a sorority because she was a member, or has a daughter who is or was in a sorority? Mu Beta Chapter and House Corp. vs. Davison, 192 Ga. 124). It is not a valid argument. There were no mass disqualifications in those cases. A Judge or Justice who also happens to be a Mason is less likely to err in favor of Freemasonry, than one, although sincerely, errs against Freemasonry out of lack of knowledge or ignorance of Masonry's purpose

and good works. Masonry has seldom sought publicity as to its work, and less so has it vocally responded to its critics and enemies. This silence now works against the Masonic order. Whether the disqualifications in this case were thought to be "politically appropriate" at this time, or due to some anti-masonic sentiment in keeping with the recent Southern Baptist Convention Resolution (and prior one) is not known for a certainty but given the Courts' "in house" policy of nondisclosure, and what appears to be a systematic exclusion of the known Masons in the decisions of the York Rite cases 198 Ga. App. 147 (Appx. B) and 209 Ga. App. 359 (Appx. A) with no non-masons being excluded and no other Masons being included in the panel of nine, gives good reason to conclude that irregularity of constitutional magnitude occurred in the

Court's composition, and was repeated thereafter, that it was no coincidence, but was planned and executed, and because those regular Court members were or had been Masons. We assert this conclusion is in fact inescapable.

When this sort of conduct is engaged in, can it ever be said with certainty that it is "harmless error" and therefore constitutionally permissible? We say it cannot. Whatever the outcome of a case for or against either party, any tampering with the procedural aspects of a case denies at least one of those parties the equal protection of the law and due process, if due process, also encompasses "proper" process. When the legal process is tampered with or is covertly altered or arranged to bring about, or make more likely, a desired result we find the glaring example of "rule by men and not by

laws," against which mankind has struggled at least since the year 1066, and which the architects of the United States Constitution strove to proscribe and which was adopted in principle by the State of Georgia. The guarantees built into this sublime instrument are not less viable or enforceable merely because they have been many times successfully circumvented, especially in our elections process by men whose mania for success and approval so greatly outweighed the virtue or integrity that they were willing to yield at the alter of pragmatism any remaining sense of right and wrong they possessed.

The social contract forged by our Constitution is the basis of law today as it was in 1787 and its too-often circumvention does not make that contract unenforceable or inappropriate; it should make those vigilant guardians of those

ideals even more vigilant, and when discovered, or made so glaringly apparent as in this case, the illicit conduct should be disapproved or admonished and the error corrected.

Would it ordinarily be expected that two thirds of the panel of nine Judges of the Court of Appeals would voluntarily recuse themselves from considering this case? We say not. If part, or all of them had done this then the word "recuse" does not appear in the judgments. That masonry does not counsel or require any special bias or prejudice of its members would be well known to those judges. We assert that in the ten and one-half months the case was docketed and lodged in the Court of Appeals there were discussions and disagreements on the question of disqualifications. We think the lapse of time from docketing to date of Judgment indicates the

reasonableness of this assertion. This writer knows of no case in the Georgia Case Law where so many Judges and Justices were disqualified. Probably the most hotly contested, highly publicized case in the State of Georgia, was the "Two Governors of Georgia" incident of 1946, Thompson Lt. Gov. et al. vs. Talmadge, 201 Ga. 867, 41 SE2d 883 (1947), in which Herman Talmadge (son of Eugene) was "elected" Governor by the Georgia General Assembly after Eugene Talmadge had died following his election by the people but before his inauguration. M.E. Thompson had been elected Lt. Governor in 1946. Some of the Supreme Court Justices had been appointed by Eugene Talmadge, who had been Governor of Georgia on more than one occasion prior to his last election and death, as had Ellis Arnall who succeeded Talmadge as Governor. Because of the prominence of the parties involved it

became a media circus of that day and a large majority of the citizens of Georgia became emotionally involved and vocal. If ever the question of bias or prejudice among the court members could be reasonably suspected, it should be in Thompson vs. Talmadge, infra.

Yet, no disqualifications took place on that Court although there were two dissents. There have been other less volatile cases in Georgia, but none with such a large number of disqualifications as in this case.

Also, we think the unprecedented action of the 11th Circuit Court of Appeals is clearly distinguished from this case. The Atlanta "Constitution" of February 27, 1991, Sec. D, pg. 4, stated that "all Federal Judges in the 11th Circuit voluntarily removed themselves from hearing the case." This is understandable since

the victim of the alleged crime was a Judge on the 11th Circuit, known and perhaps loved or venerated by his fellow Judges, but we assert that also present was the question of possible "appearance of irregularity" in the Court reviewing Walter Leroy Moody Jr's. appeal.

We can conceive no compelling or even reasonable ground for the disqualifications in this case other than a design to engineer the judgment however well meaning the "engineer" might have been. Actually, all of our prejudices are without sound reasoning although all of us indulge in this fallacy to some extent about some group or premise and without bothering to inquire as to the truth. In America we are not unique in possessing this fault.

Historically in this country, at least since the 1830's, there have been from time to time anti-masonic movements

such as in the "Morgan Affair" and the National "Anti-Masonic (Political) Party"; no other fraternal order has been so maligned. A small minority of individuals in the recent Southern Baptist Convention (alleged 8,000,000 members) again took up the hue and cry against Masonry creating widespread discussion and controversy, fueling anew the anti-masonic sentiments among a great many people, this time based upon the erroneous premise that freemasonry was incompatible with Christianity. The fact that the Resolution failed was not widely publicized, it not being "sensational" news anymore.

We think freemasonry, its works, its ideals, and its presence in Georgia and the United States is not disapproved by a majority of our citizens nor by any of those who benefit from its various charities. The 85,000 masons in Georgia

together with wives and children number not less than a quarter-million people directly effected by this case. But let us assume the masons were disapproved by the majority. Would they be less entitled to equal protection and due process than the Abraham Lincoln Brigade or the Nazi Party? We say not.

Is it constitutionally permissible to cast aside the case because it is unimportant, involving taxability - "only money"? We say not.

Can we say it is ethically appropriate because it is or may be politically expedient? We say not.

Prior to the York Rite cases, the Georgia Appeals Courts have interpreted O.C.G.A. Sec. 15-1-9.1 and O.C.G.A. 15-1-8 (Appx. P) (formerly Ga. Code Sec. 24-102) setting forth grounds for disqualification,

which we contend the Appeals Courts did not follow in the York Rite cases.

In Blakeman vs. Harwell, 198 Ga. 165, 31 SE2d 50 (1944), the Court said "1 (a) No justice of the Supreme Court, merely because he is a member of the Masonic Order, is disqualified in participating in the decision of a cause where an interested party is the Scottish Rite Hospital for Crippled Children..."

The Court further said (p. 173) "In order to disqualify a Judge, there must exist a ground authorized by law to disqualify him; it is not for the Courts to add other grounds of disqualification (Emp. ours).

"There is a Georgia statute which declares where a Judge or Justice is disqualified, Code Sec. 24-102 (now O.C.G.A. 15-1-8). The interest which by our Code will disqualify is a pecuniary

interest... "Both the Court of Appeals of this State and this Court have held that the statutory grounds of disqualification contained in this section are exhaustive."

And in Robinson vs. State, 86 Ga.App. 375 (1952), 71 SE2d 677, (1952), the Court said (p. 377) "Code Sec. 24-102, providing under what circumstances Judges shall be disqualified, specifies only matters in which they have a pecuniary interest or are related within the sixth degree to any party interested in the result of the matter. The statutory grounds named in this section are exhaustive."

In Mapp vs. The State, 204 Ga.App. 647, 420 SE2d 615 (1992), the Court dealt with the limitations of O.C.G.A. Sec. 15-1-8. The Court said "The grounds for recusal in Section 15-1-8 are exclusive and exhaustive, and Courts may not add other grounds of disqualification to those stated

in the statute. (With citations.)" See also Daniel vs. Yow, 226 Ga. 544, 176 SE2d 67 (1970), where the Court said, "Bias or prejudice of a judge, which is not based on interest either pecuniary or relationship to party within prohibited degree, affords no legal ground for disqualification."

In Dominquez vs. Enterprise Leasing Company, 197 Ga.App. 664, 399 SE2d 269 (1990), the Court dealt with O.C.G.A. Sec. 15-1-9.1, the authority under which the Georgia Court of Appeals selected the Judges to replace those disqualified in York Rite, as cited in its order of November 6, 1990, (Appx. C). Judge Birdsong, who wrote the opinion, appears critical of the use or application of O.C.G.A. Sec. 15-1-9.1. He says "this statute permits the mutual appointment of Judges by Judges to sit in every judicial office in this State, without apparent

limitation. (Emph. ours) It thus seems that if we had not enacted Rule 18(c) to prevent it, the Georgia Court of Appeals could request a Municipal Court Judge to appoint some physically qualified person to 'assist' us in the business of this Court, without regard to the Constitutional provisions for a public election of Court of Appeals Judges and for appointment by the Governor to fill vacancies... This unreigned method of administering the judicial business of a Court, and its disaffection of the electors or of parties proceeding in the Court, do not seem to be a sagacious result of the desire for judicial 'flexibility'." (See Appx. Q) It does not appear that the Georgia Supreme Court has addressed or interpreted O.C.G.A. Sec. 15-1-9.1, but it has addressed the limitations of O.C.G.A. Sec. 15-1-8, the

grounds for judicial disqualification, and has not expanded those limitations.

We assert the grounds for disqualification are exhaustive and exclusive; the grounds limitations are as incumbent upon the Court members, as it is that "Courts may not add other grounds of disqualification". A Justice or Judge should not ask to be recused unless the "ground" is clearly within the parameters of O.C.G.A. Sec. 15-1-8. This should not be done for political or other reason outside that statute.

It appears other jurisdictions follow the rule as to fraternal orders. Odom et al. vs. Langston et al., 205 SW2d 518 (Supreme Court of Missouri 1947), says: "The fact that some Judges were Masons did not disqualify them from passing on construction of a trust naming Masonic Home as one of the beneficiaries".

In State vs. Sams, 210 SE2d 916, 75 A.L.R.3d 1017 (W.Va. 1975). The Defendant allegedly committed burglary of the Elks Club, the Court stated the Judge was not disqualified by reason of his membership in the Elks Club.

We know of no good, valid or legal reason for the disqualifications, which began in the Judgment of the Georgia Court of Appeals of November 27, 1990, (198 Ga.App. 147) and continued through the Supreme Court's denial of Reconsideration of Denial of Certiorari of October 28, 1993, in excluding the known Masons and including only (now) known non-Masons to review the case. It resulted in Judgment against these Petitioners. The (now) obvious arrangement of both Georgia Appellate Courts in this case cannot be said to be harmless error, or Constitutionally permissible.

The question of denial of equal protection of the law under the State and Federal Constitutions has been alleged throughout the course of this case, in that the Tax Assessor, based on his own personal agenda, placed these Masonically owned properties on the tax rolls after over one hundred years of exemption, while still allowing the exemption to like organizations, some of them clearly being non-charitable entities, and these organizations are still being so favored to date hereof. However, we are not actively pursuing that feature in this Application for Certiorari.

CONCLUSION

We close by saying that equal treatment under the law should never be consciously denied by our judiciary because the litigant is one of an identifiable class or group whether it be racial, religious, fraternal or other such class. The Petitioners here were clearly identifiable from the outset by the case caption as a part of the Masonic Order. However well intentioned the disqualifications by the Court may have been, the effect of it worked a denial of equal protection of the law and loss of Petitioners' case. To argue that disqualification of all Masons on the Court and replacing them solely with non-masons was mere coincidence is beyond belief.

We pray that the judgment of the Court of Appeals of Georgia in its decision, York Rite Bodies of Freemasonry of Savannah et

al. vs. Board of Equalization, 198 Ga.App. 147, 401 SE2d 30 (1991), and in York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 209 Ga.App. 359, 433 SE2d 299 (1993), and denial of Certiorari by the Georgia Supreme Court dated October 5, 1993, be reversed as being null and void and the findings and judgment of the trial court in its Order dated October 2, 1992, be affirmed.

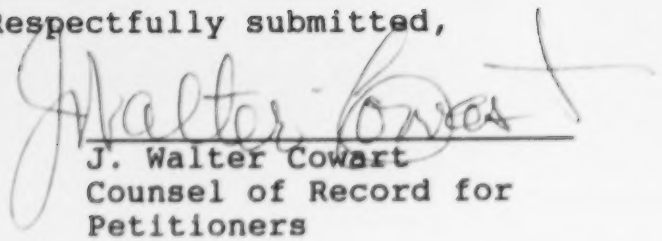
(Appx. T)

In the first alternative, that the case be reviewed on its merits and be reversed;

In the second alternative, that the case be reversed and remanded for proper handling by the Appellate Courts of Georgia;

And such other relief as in this Honorable Court's judgment is just and proper.

Respectfully submitted,



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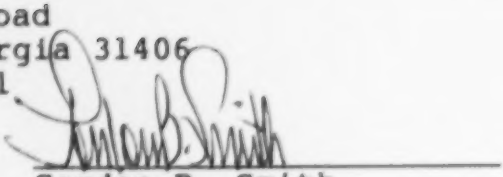

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Supreme Court, U.S.
FILED

931423 JAN 14 1994

OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1993

YORK RITE BODIES OF FREEMASONRY OF
SAVANNAH, ET AL.

PETITIONERS

vs.

BOARD OF EQUALIZATION OF CHATHAM COUNTY,

RESPONDENTS

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA AND THE
COURT OF APPEALS OF GEORGIA**

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APPENDIX A
(Verbatim Copy)

THIRD DIVISION
JOHNSON, BLACKBURN , J.J.
SMITH, J.

JUN 01 1993

NOTICE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED IN OUR CLERK'S OFFICE WITHIN TEN DAYS OF THE DATE OF DECISION to be deemed timely filed. (Court of Appeals Rules 4 and 48, March 1, 1985).

In the Court of Appeals of Georgia.

A 93A0710. BOARD OF EQUALIZATION V. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH et al.
JO-048

JOHNSON, Judge

The issue in this case is whether the properties of two Masonic organizations are entitled to exemption from ad valorem taxation under OCGA Section 48-5-41 (a) (4) as institutions of "purely public charity." In York Rite Bodies of Freemasonry of Savannah v. Bd. of Equalization, 198 Ga. App. 147, 149 (2) (401 SE2d 30) (1990), we held that the Masonic lodges in question are not entitled to such an exemption

because they "are used as meeting places, and are not used for the actual charitable purposes for which the Masons were established. Also, the properties are used only by members of the respective lodges and are therefore not open to the 'public.'" The Supreme Court reversed that holding and remanded the case to the trial court for an evidentiary hearing to determine whether the lodges qualify for the exemption. York Rite Bodies of Freemasonry of Savannah v. Bd. of Equalization, 261 Ga. 558 (408 SE2d 699) (1991). The Supreme Court set forth a test to be used in making that determination. "In determining whether property qualifies as an institution of 'purely public charity' as set forth in OCGA Section 48-5-41 (a) (4), three factors must be considered and must coexist. First, the owner must be an institution devoted

entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits." York Rite, 261 Ga. at 558 (2). On remand, the trial court applied the test enunciated by the Supreme Court and concluded that the properties are entitled to the exemption as institutions of purely public charity. The Board of Equalization appeals.

"[F]indings of trial courts in nonjury trials shall not be set aside unless clearly erroneous." (Citation and punctuation omitted.) Scott v. Purser Truck Sales, 198 Ga. App. 611, 612 (1) (1991). Here, the trial court found that the Masons are an institution devoted entirely to charitable pursuits, that the charitable pursuits are for the benefit of the public

and that the use of the lodges is exclusively devoted to those charitable pursuits. These findings are not supported by any evidence and are therefore clearly erroneous. There is ample evidence in the record to support a finding that the Masons devote a substantial amount of time and money to charitable pursuits which benefit the public. There is, however, no evidence that the Masons are devoted entirely to such pursuits or that the lodges in question are devoted exclusively to those pursuits. On the contrary, the evidence in the record shows that the Masonic organization devotes numerous resources to non-charitable pursuits which benefit only its members.

The record before this court shows that membership in the Masonic organization is limited to males who are at least 21 years old and who believe in one god. It

also shows that one of the primary purposes of the Masonic organization is the improvement of its individual members through lectures and other programs held at their lodges. An exhibit in the record states that, in 1990, 58 percent of the Masons' philanthropic dollars were used to benefit the general public. The implication of that statistic is that the remaining 42 percent of the Masons monetary donations were used for exclusive Masonic purposes and, in fact, the exhibit shows that 42 percent of the money was used for "Masonic Homes, Hospitals, etc." One of the Masons testified at his deposition that the Masons in some states maintain retirement homes reserved exclusively for use by their members, although no such homes exist in Georgia. He further testified that the Masons run a children's home in Georgia and required that ten

percent of the space in the home be reserved specifically for Masonic children. Another Mason testified at his disposition that the Masons of Georgia maintain a relief fund for the primary purpose of caring for "needy Masons, their wives, widows and orphans." He further testified, "The individual Lodges usually -- they try to take care of their own. If they can't take care of their own, then they appeal to Grand Lodge for assistance."

None of the evidence contradicts the fact that the Masons serve a benevolent purpose and pursue many public charities. "However, no matter how high the ideals of an institution, nor how lofty its purposes, in order for it to qualify as a charitable institution for tax exemption under OCGA Section 48-5-41 (a) (4), it must have the sole purpose and activity of dispensing public charity." (Citations and

punctuation omitted; emphasis in original.) York Rite, 261 Ga.at 558-559 (2) (a) & (b). Because many of the Masons' activities and resources are used exclusively for the personal benefit of their group, it cannot be said that the group has the sole purpose and activity of dispensing public charity.

Moreover, "the use of the property must be exclusively devoted to conduct that benefits the public by furthering the charitable pursuits of its owner." Id. at 559 (2) (c). There is no evidence in the record that the use of the lodges in this case are exclusively devoted to the Masons' charitable pursuits which do in fact benefit the public. Instead, the evidence shows that in addition to using the lodges for such charitable pursuits, the Masons also use the lodges to conduct business which furthers the pursuits that benefit only Masons. They hold programs at the

lodges which are designed solely to improve the individual members. They also collect money at the meetings, some of which is used for the exclusive Masonic pursuits discussed above. The property is therefore not exclusively devoted to conduct that benefits the public.

The evidence in the record shows that the Masons are not an institution devoted entirely to public charity and that the lodges in question are not used exclusively for public charity. Consequently, the trial court's judgment that the Masons met their burden of proving that their properties are entitled to exemption from ad valorem taxation under OCGA Section 48-5-41 (a) (4) as institutions of purely public charity is clearly erroneous and must be reversed.

Judgment reversed. Blackburn, and Smith, JJ., concur.

APPENDIX B
(VERBATIM COPY)

WHOLE COURT NOV 27, 1990

In the Court of Appeals of Georgia

A90A0719. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH, GEORGIA et al. v. BOARD OF EQUALIZATION Co-047.

COOPER, Judge

This is a consolidated appeal of two cases involving two Masonic lodges, Thunderbolt Lodge No. 693 and York Rite Bodies of Savannah, Georgia ("appellants"). Appellants had been afforded an ad valorem tax exemption on their properties until 1985, when this exemption was revoked by the local taxing authorities. In December 1985 and January 1986, appellants filed appeals to the superior court from the adverse decisions of the taxing authorities. The next pleading was filed by appellants in April 1988, and in November 1988, the Thunderbolt case was

dismissed for lack of prosecution as no request for trial had been made by the appellant in that case. In May 1989, appellants filed a motion for declaratory judgment and therein asserted that the properties of appellants were exempt from taxation because appellants are "purely public charities" under OCGA Section 48-5-41 (a) (4). Also in May 1989, despite the earlier dismissal of the Thunderbolt case, the two cases were consolidated. By order entered in October 1989, the superior court ruled that the Thunderbolt case was properly dismissed and that the dismissal constituted an adjudication on the merits which prevented the issues from being raised again. As to the York Rite Bodies case, the court, after a lengthy discussion of the controlling authority, determined that the property at issue was not used in such a manner as to qualify it for tax

exemption and denied the declaratory judgment. This appeal followed.

1. Upon a review of the record, we determine that the trial court erred by allowing the dismissal of the Thunderbolt case to act as an adjudication of the merits. Contrary to the trial court's ruling, OCGA Section 9-11-41 (b) states "[a] dismissal for failure of the plaintiff to prosecute does not operate as an adjudication upon the merits . . . " Consequently, appellants were not barred by the doctrine of res judicata from reasserting the claims in the Thunderbolt case. Idowu v. Lester, 176 Ga. App. 713 (1a) (377 SE2d 386) (1985). See Leach v. Aetna Casualty & Surety Company, 172 Ga. App. 785 (324 SE2d 494 (1984). The trial court should have considered the merits of the Thunderbolt case. Since the issues presented by both cases are identical, we

will consider herein appellants' enumeration of errors as to both cases.

2. In their first and fifth enumerations of error, appellants assert that the trial court erred in its interpretation of the "purely public charity" doctrine. The two properties as issue are Masonic lodges, used exclusively as meeting places for Masonic and Masonic-related activities, and no part of either is used for commercial purposes. Unquestionably, the Masonic organization devotes a substantial amount of time and money for charitable purposes. At issue here, however, is whether the use of the properties meets the tests established by Georgia law to qualify them for a property tax exemption. "The test is whether the property itself is 'dedicated to charity and used exclusively' as an institution of purely public charity, not whether the

[appellant] is an organization of purely public charity." Tharpe v. Central Ga. Council of Boy Scouts of America, 185 Ga. 810, 813 (196 SE792) (1938). "If exempt, it is only because it is property used exclusively as an institution of purely public charity." Mu Beta Chapter Chi Omega House Corp. v. Davison, 192 Ga. 124, 126 (14 SE2d 744) (1941). "Property owned by a charitable institution is not exempt from taxation unless it is used for the purpose for which that institution was established. Mere latent ownership of property by an institution of public charity will not entitle it to an exemption in the absence of the required application of the property to the charitable goals of the owner." Thomas v. Northeast Georgia Council, Inc., Boy Scouts of America, 241 Ga. 291, 293 (244 SE2d 842) (1978). That an organization is non-profit, non-commercial,

that it serves a benevolent purpose, and that its charter declares it to be a charitable and benevolent institution, do not automatically qualify it for a tax exemption as a charitable institution. Historic House Museum Corporation v. Camp, 223 Ga. 510, 511 (156 SE2d 361) (1967). Further, the use of the property sought to be exempted must not only be purely charitable, but must also be devoted to a public charity. Georgia Congress of Parents & Teachers, Inc. v. Boynton, 239 Ga. 472, 473 (238 SE2d 113) (1977).

Based upon the exemption tests above enunciated by the Georgia courts, we hold that the properties at issue do not qualify for an ad valorem exemption pursuant to OCGA Section 48-5-41 (a) (4). The properties are used as meeting places, and are not used for the actual charitable purposes for which the Masons were

established. Also, the properties are used only by members of the respective lodges and are therefore not open to the "public". We agree with the trial court that the case of Massenburg v. Grand Lodge F & AM of the State of Georgia, 81 Ga. 212 (7 SE 636) (1888) is not controlling because the issue decided in that case was the taxability of productive property when the income was used for charitable purposes. Any implication in that case that Masonic lodges, used exclusively for Masonic fraternal activities, are tax exempt is not binding as the controlling usage tests were not applied to those factual circumstances. Appellant's first and fifth enumeration are without merit.

3. Appellant's second and third enumeration of error, asserting that the trial court erred in failing to require appellee to file responsive pleadings and

in failing to place the burden of proof on appellee, are both without merit. An appeal to the superior court from the county tax assessment is not a complaint as contemplated by the Civil Practice Act. Rogers v. DeKalb County Board of Tax Assessors, 247 Ga. 726 (1) (279 SE2d 223) (1981). Therefore, an answer is not required in response to such appeal, and a default judgment will not lie for failure to answer. Id. The court did not err in failing to require a responsive pleading, and such failure did not deprive appellants of any of their constitutional rights. "The burden of proof in the superior court was on the taxpayers, as the parties who initiated the appeal to that court. [Cit.]" Hawkins v. Grady County Board of Tax Assessors, 180 Ga. App. 834 (3) (350 SE2d 790) (1986). The court was not authorized

to shift that burden, and no error occurred.

4. Appellants finally assert that the court erred in not considering the act of the Georgia legislature that incorporated the Grand Lodge of Georgia in 1796, and in not considering a cited Alabama case. Although the act referenced states that the principles of the Masons are "charity and universal benevolence," as stated in Division 2, the wording of a corporate charter is not determinative; the property usage tests must nevertheless be satisfied. Boynton, supra at 473. Further, it was not error for the trial court to fail to consider an Alabama case cited by appellants in the face of controlling Georgia authority.

Judgment affirmed. Beasley, Coursey, Jackson, Walther, and Wilcox, JJ., concur. Birdsong, Shulman, and Smith, JJ., dissent.

Carley, C. J., Deen, P. J., McMurray, P.J., Banke, P. J., Sognier, J., and Pope, Jr., disqualified.

BIRDSONG, Judge, Dissenting.

I am compelled to dissent as to Division 2 of the majority opinion and accordingly, I would reverse the holding of the trial court as to the issue of whether it erred in its interpretation of the "purely public charity" doctrine.

In my view, the position taken by the majority is too broad and threatens to destroy the property tax exemption status of many charitable organizations in this state, including perhaps that of the Red Cross and Salvation Army who maintain and operate non-profit headquarters or administrative buildings necessary for the perpetuation of their charitable entities and the planning of their organizational goals, including the accomplishment and

coordination therein of public relations and publicity activities and the preparation of diverse charitable campaign strategies not directly connected to the disbursement of existing charitable funds.

Currently, OCGA Section 48-5-41 (a) (4) provides that among the property exempt from ad valorem property taxation is that of "[a]ll institutions of purely public charity." OCGA Section 48-5-41 (a) (5) (A) and (B) provides: "All property of nonprofit hospitals used in connection with their operation when the hospitals have no stockholders, have no income or profit which is distributed to or for the benefit of any private person, and are subject to the laws of this state regulating nonprofit or charitable corporations ...(B) Property exempted pursuant to this paragraph shall not include property of a nonprofit hospital held primarily for investment

purposes or used for purposes unrelated to ...(i) Providing of patient care ...(ii) Providing and delivery of health care services; or ... (iii) Training and education of physicians, nurses and other health care personnel."

The Masonic Lodges in the instant case may be referred to as the brain of the creature. It is undisputed no income is derived from the lodges. The function of the lodge is for the meeting place of its members and for the decisions which the members make. All decisions regarding how the lodge supports its charities emanates from its headquarters; without the brains, its lodges, the creature is nothing. Surely this use qualifies the lodges for its exemption which they ask for and deserve. This code section on its face applies to all institutions, both public and private, which are institutions of

"purely public charity." In Massenburg v. The Grand Lodge, 81 Ga. 212, 217 (7 SE 636), the Supreme Court did "concede the purely public charity character of the charity which the Grand Lodge of Georgia administers..." It has never been held that masonic bodies do not support a wide variety of charitable institutions and activities ministering to the needs of the whole of classes for whose relief the charities are intended or adapted, including as commonly known to the public at large: children's hospitals, burn centers, eye foundations and orphanages. For a definition of "charity" as used in tax exemption statutes, see generally Peachtree on Peachtree Inn v. Camp, 120 Ga. App. 403, 409-410 (170 SE2d 709).

However, the majority in essence observes that in Tharpe v. Central Ga. Council, B.S.A., 185 Ga. 810, 813 (196 SE

762), it was recently held that a test to determine whether property shall be exempt from taxation "is whether the property itself is 'dedicated to charity and used exclusively' as an institution of purely public charity." Moreover, Mu Beta Chapter &c. House Corp. v. Davison, 192 Ga. 124, 126 (14 SE2d 744), the Supreme Court held that "[i]t is the use to which the property is put, rather than the declaration of purpose found in its owner's character, that determines the question of exemption from taxation." Compare Atlanta Masonic Temple Co. v. City of Atlanta, 162 Ga. 244 (133 SE 864).

However, while mere latent ownership of property an institution of public charity will not entitle it to tax exemption per se (Thomas v. Northeast Ga. Council, B. S. A., 241 Ga. 291, 293 (244 SE2d 842)), neither should the mere

ownership and operation by a charitable institution of an organizational headquarters deprive such property per se of its tax exemption, regardless of the nomenclature given to such administrative building and whether they be called headquarters, administrative wings, operations buildings, lodges, or meeting halls. In fact, the Supreme Court has held that "[i]n so far as such organizations are administrators and disbursers of purely public charity, their property permanently in use for that purpose is exempt from taxation." (Emphasis suppled.) Richardson v. Executive Comm. of the Baptist Convention, 176 Ga. 705, 708 (169 SE 18).

In Elder v. Henrietta Egleston Hosp., 205 Ga. 489 (53 SE2d 751), the City of Atlanta, assessed that property of the corporation, including lands, buildings, and hospital equipment which the hospital

used exclusively for the purpose of operating and maintaining its institutions. Id. at 490. The court noted that the precedent found in a number of earlier cases was no longer binding, in view of the new wording adopted in the Constitution of 1945 concerning the tax exemption of property of purely public charity institutions. The 1945 constitutional provision provided, inter alia, that the General Assembly may exempt from taxation "'all institutions of purely public charity; ... provided the property so exempted be not used for the purpose of private or corporate profit and income, distributable to shareholders in corporations owning such property or to other owners of such property, and any income from such property is used exclusively for religious, educational and charitable purposes, or for either one or

more of such purposes and for the purpose of maintaining and operating such institution." (Emphasis supplied.) Id. at 492. The Court stated that in 1946, the General Assembly has padded an act exempting from taxation all of the property enumerated in the above-state clause using the identical language there employed. Id. at 492. Then the Court observed "[b]ut in the present case no contention is made, nor could the same be successfully made, that the General Assembly has not exempted from taxation all of the property which it has constitutional authority to exempt...." (Emphasis supplied.) Id. at 492. Thereafter, the Court concluded "the property sought to be taxes has been exempted by statute," and in doing so first opined that "as shown by our statement of facts, all of its income from all sources is used exclusively for maintenance,

operation, enlarging its charitable facilities, and for furtherance of its charitable purposes, with no part of the same distributable to any one having an interest therein." (Emphasis supplied.) Id. at 492-493. OCGA Section 48-5-41 (c) today contains virtually the same verbiage as the above provisions cited in Elder. And in determining the use to which the property is placed using the tests of Tharpe and Mu Beta, supra, due consideration must also be given to the statutory provisions of OCGA Section 48-5-41 (c), and the holding of our Supreme Court in Elder. Viewing Elder and OCGA Section 48-5-41 (c) in their entirety and in light of prior cases recognizing the need for charitable institutions to maintain and operate their organizations, it appears that a permissible use of tax exempt charitable property clearly would include such uses as for the purposes of

administering, maintaining and operating their own charitable institutions, and that unless the property was used to generate an income or profit not exempted from taxation under OCGA Section 48-5-41 (c), the property itself would remain tax exempt.

A masonic "lodge" serves as the cornerstone of the organization. Within the "lodge" is conducted the business of the lodge, including the voting for dispensing of charitable funds, the coordination of current charitable activities, and the planning of future charitable fund raising events. Even in Massenburg, under the then existing more stringent state rules of charitable property exemption, the Supreme Court recognized "the temple or lodge-building of the charitable order or society--[as being] the domicile, habitation, seat, and external symbol of the organization...."

Massenburg, supra at 216. Moreover, in Division 2 of its opinion in Massenburg, the court tacitly reaches the conclusion that the portion of the lodge property not being operated as a money making rental activity "could rightfully claim" tax exemption through application of the "rule of apportionment." (Emphasis supplied.) Massenburg, supra at 220 (2). In the case sub judice, the board of tax assessors does not assert in its brief that the "lodge" buildings were ever used or rented in the commercial sense or that any profit has even been made or attempted through the use of this property. Compare OCGA Section 48-5-41 (c). Today, under OCGA Section 48-4-51 (c) and Elder, even the making of income or profit by the charitable institutions property would not per se destroy its tax exemption. Rather, the use to which such profit or income is put and the manner in

which it ultimately is distributed would appear to be controlling under the plan language of OCGA Section 48-5-41 (c).

Accordingly, I would reverse the trial court's judgment and remand the case for an application of the rule for tax exemption of the property of charitable institutions, above discussed, in a manner consistent with the legislative intent clearly reflected by OCGA Section 48-5-41 (c) and the holding of the Supreme Court in Elder, supra.

I respectfully dissent. I am authorized to state that Judge Shulman and Judge Smith join in this dissent.

Court of Appeals

of the State of Georgia

ATLANTA DECEMBER 20, 1990

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A90A0719. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH, GEORGIA ET AL V. BOARD OF EQUALIZATION

UPON CONSIDERATION OF THE MOTION FOR REHEARING FILED ON BEHALF OF APPELLANT IN THE ABOVE STYLED CASE, IT IS HEREBY ORDERED THAT PAGE 6 ATTACHED HERETO BE SUBSTITUTED FOR PAGE 6 OF THE ORIGINAL OPINION DATED NOVEMBER 27, 1990. MOTION FOR REHEARING IS HEREBY DENIED.

Court of Appeals of the
State of Georgia
Clerk's Office, Atlanta,
DEC 20 1990

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written

S/ Victoria McLaughlin, Clerk

parties who initiated the appeal to that court. [Cit.]" Hawkins v. Grady County Board of Tax Assessors, 180 Ga. App 834 (3) (350 SE2d 790) (1986). The court was not authorized to shift that burden, and no error occurred.

4. Appellants finally assert that the court erred in not considering the act of the Georgia legislature that incorporated the Grand Lodge of Georgia in 1796, and in not considering a cited Alabama case. Although the act referenced states that the principles of the masons are "charity and universal benevolence," as stated in Division 2, the wording of a corporate charter is not determintive; the property usage these must nevertheless be satisfied. Boynton, supra at 473. Further, it was not error for the trial court to fail to consider an Alabama case cited by

appellants in the fact of controlling Georgia authority.

Judgment affirmed. Beasley, Daniel M. Coursey, Jr., Dawson Jackson, Robert G. Walther, and Thomas D. Wilcox, Jr., JJ., concur. Birdsong, Arnold Shulman, and William J. Smith, JJ., dissent. Carley, C. J., Deen, P.J., McMurray, P. J., Banke, P. J., Sognier, J., and Pope, Jr., disqualified.

APPENDIX C
(Verbatim copy)

Court of Appeals

of the State of Georgia

ATLANTA, November 6, 1990

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed.

A90A0719. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH, GEORGIA et al. v. BOARD OF EQUALIZATION

Subsequent to the entry of the order of this Court dated October 22, 1990, the Chief Judges of the Chattahoochee, Gwinnett, Macon, Rome and Stone Mountain Judicial Circuits have designated judges to participate in the above-styled case as follows, to wit: Honorable William J. Smith; Honorable K. Dawson Jackson; Honorable Thomas Day Wilcox; Honorable Robert G. Walther; and Honorable Daniel M. Coursey Jr. Therefore, pursuant to the order of October 22, 1990, it appears that

designations and acceptances have been made and filed in accordance with the provisions of OCGA Section 15-1-9.1 et seq. Accordingly, it is ordered that for the purpose of considering and determining the above-styled case, the Court shall be composed as follows, to wit: Judge A. W. Birdsong, Jr., Acting Presiding Judge, Judge Dorothy T. Beasley; Judge Clarence Cooper; Judge Arnold Shulman; Judge Daniel M. Coursey, Jr.; Judge K. Dawson Jackson; Judge William J. Smith; Judge Robert G. Walther; and Judge Thomas Day Wilcox.

Court of Appeals of the
State of Georgia

Clerk's Office,
Atlanta NOV 6 1990

I Certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.
S/ Victoria McLaughlin, Clerk

APPENDIX D

AN EXCERPT FROM PETITIONERS' MOTION FOR REHEARING DATED DECEMBER 6, 1990, FOLLOWING JUDGMENT OF GEORGIA COURT OF APPEALS OF NOVEMBER 27, 1990, WHEREIN THE QUESTION OF COMPOSITION OF THE COURT WAS FIRST RAISED.

"APPELLANTS OBJECT to the Order of the Court of October 22, 1990, in its designation of the Chief Judges of Superior Court from five Judicial Circuits (sic: and 1 Senior Judge) to replace six Appeals Court Judges who were disqualified, under the provisions of O.C.G.A. Section 15-1-9.1, et seq. and object that the opinion of the Appeals Court was rendered by a minority of the Court (sic: three and a Senior Judge) and five Superior Court Judges. We question the applicability of the statute in placing Superior Court Judges on the Appellate Bench for decision in this case.

"With all due respect, and with no intent to appear in contempt of this Court, we assert that such action by the Court was

inappropriate, and adversely affected appellants' case in the opinion rendered by the restructured Court, all to the detriment of appellants. The disqualification of a majority of the Whole Court, is indeed an unusual occurance, and this writer knows of no case in memory where so many judges were disqualified to hear a case. We realize that the "reasons why" is privileged in the Court, and appellants can only wonder and speculate as to reasons. Please be it remembered also that two Superior Court judges recused or disqualified themselves in the trial phase of the cases.

"It may be considered fair to assume that the disqualifications occured based upon bias; that they were members of masonry, or closely related to someone in masonry, or had knowledge of masonry, its customs and practices particularly relative

to its charity activities. We assert that if this be true the disqualifications were error, and unjustified.

"One connected with masonry such as outlined above would not be subject to disqualification, anymore than one who had formerly been a Boy Scout or is a strong supporter of the Boy Scout organization, or closely related to one blind or aged, or directly involved in some organization, fraternal, religious or civic, whose main goals are charity activities. Such a one is not, per se, so imbued with bias as to disqualify him to render a just judgment in a case involving an organization or movement such as any of the above. We submit that such a one would make a better or more accurate judgment due to his knowledge of the practices of such organization than one who has no knowledge or background as to the subject matter.

"There are certainly as many people in Georgia who are anti-masonry as there are who are pro-masonry, and one who is pro-masonry is no more likely to reach an unjust verdict due to alleged bias, than one who is anti-masonry, or influenced by the anti-masonry fad now existant in this country, due to alleged prejudice. In truth, the prejudice is unfounded as to the masonic order and there is nothing in masonry which would require or encourage bias in one so judging, or to influence a verdict which is unjust. The above is not stated to offend and it is sincerely hoped that no offence is taken, but is stated as an assumption based on the unusual circumstances of six Judges of the Appeals Court being disqualified to hear the matter, and two Superior Court Judges recusing or disqualifying in the trial phase."

APPENDIX E

AN EXCERPT FROM PETITIONERS' APPLICATION FOR CERTIORARI OF JANUARY 1991, FOLLOWING DENIAL OF MOTION FOR REHEARING BY COURT OF APPEALS WHERE THE QUESTION OF IRREGULARITY OF THE COURT'S COMPOSITION WAS RAISED FOR THE SECOND TIME.

"Six regular members of the Court were disqualified, about which we complain, assigning error as to the composition of the Court, and its application of O.C.G.A. 15-1-9.1.

"It is fair to assume that the misstatements of fact made by the majority of the Court were the result of insufficient knowledge of the masonic order, rather than any antimasonic sentiments, but there is nothing in the record to support such statements.

"(b) Appellants OBJECT AND ASSIGN AS HARMFUL ERROR THE IRREGULAR COMPOSITION OF THE COURT OF APPEALS FOR DECISION OF THIS CASE. If the case had been decided by the regular and duly constituted Court, elected

by all people of Georgia, the decision would have favored appellants, and without there being any appearance of bias of prejudice. (Emph. ours).

"We contend that OCGA 15-1-9.1 et seq., was inappropriately employed; that it was not the legislative intent that our Appellate Courts be included in the section, and certainly not to replace 6 judges disqualified of the whole Court. It is conceded that on occasion we have noted the substitution of one or two judges of the Court, but we know of no case or instance wherein so many Judges were disqualified to hear an issue. (Exhib. A) Although only 5 Circuit Chief Judges were selected, 6 Appeals Judges were disqualified.

"It is noted that only two regular members of the Court were in the majority affirming the trial Court, the other two

regular members joined in the Dissent, with one Superior Court judge joining. Thus, we strongly assert that had the regular and duly elected members of the Court considered the case appellants would have prevailed.

"It is reasonable to assume that not prejudice, but bias, occasioned the disqualifications of 6 Judges; that due to some close masonic affiliation, or broad knowledge of the customs and practices of masonry, they were disqualified, whether by recusal or at the suggestion of another. In either case, the disqualifications, we assert, were improper and hurtful to appellants. The opinion itself, and the two dissents from the regular members suggests the reasonableness of this assumption.

"On January 11, 1990 this case was transferred to the Court of Appeals by the

Supreme Court, same having been filed in Supreme Court; almost eleven months later, appellants received Exhibit A (attached) on November 8, 1990, and on November 27, 1990, the reconstituted Court of Appeals rendered its judgment, a whole Court decision. We think the time sequence lends strength to the above assumption.

"However, we wish to again strongly assert that no disrespect is intended to any member sitting on the panel, and it is not intended to imply any personal impropriety on the part of any Judge, or conscious prejudice, or wrongful intent.

"To charge one with bias because he has a masonic affiliation or is a member (bias meaning the inability to reach a fair, unbiased opinion on the Bench) is as unreasonable an assertion as saying that one, who was a boy scout, an advisor, or an admirer of scouting, is biased to the

extent that he could not render a just and impartial judgment involving the Boy Scouts and their interests. In either case the charge would be invalid.

"We respectfully ask the Court to reverse the Court of Appeals on this feature, that not even the appearance of irregularity be evident in this case."

APPENDIX F
(Verbatim Copy)

(Verbatim Copy)

Court of Appeals

of the State of Georgia

ATLANTA JULY 08, 1993

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A93A0710

BOARD OF EQUALIZATION OF CHATHAM COUNTY V. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the
State of Georgia

Clerk's Office, Atlanta
JUL 08, 1993

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.
S/ Victoria McLaughlin, Clerk

APPENDIX G

AN EXCERPT FROM PETITIONERS' APPLICATION FOR CERTIORARI DATED JULY 29, 1993, FOLLOWING DENIAL OF MOTION FOR RECONSIDERATION WHERE THE QUESTION OF IRREGULARITY WAS RAISED FOR THE THIRD TIME.

"On the first appeal the Court of Appeals had six judges disqualified. The full bench decision (3 dissents) was supplemented by Superior Court Judges from Middle and North Georgia. Error as to composition of the Court under O.C.G.A. 15-1-9.1 was raised, but not treated by the Supreme Court (reversed on other grounds), but is here repeated to emphasize the very unusual nature of a case wherein two trial judges, six Appeal Court Judges and two Supreme Court Justices (261 Ga. 558) were recused or disqualified.

"Whether bias or prejudice were factors, or other considerations, would be speculation on our part, but with the recent anti-masonic sentiment, written and

oral about the State and Country (unjust and untrue, we strongly assert) we would be derelict in our duty not to emphasize the highly unusual judicial events. At a minimum, these events indicate the extreme importance of the issues presented, if not evidence of emotional, bias-prejudice, or prejudgment dispositions. Whatever the reason, it appears these cases and the underlying principals involved should be most carefully scrutinized in order that fair and equitable treatment be had without regard to current popularity or unpopularity."

APPENDIX H

AN EXCERPT FROM PETITIONERS' MOTION TO THE SUPREME COURT OF GEORGIA FOR RECONSIDERATION OF THE DENIAL OF CERTIORARI, DATED OCTOBER 14, 1993, BEING THE FOURTH TIME QUESTION WAS RAISED OF IRREGULARITY OF THE DISQUALIFICATIONS.

"5. In the first appearance of this case ten Judges and Justices were disqualified and in this second appearance two Justices were disqualified in the Denial of Certiorari. The reason for these disqualifications, or for the large number disqualified is not known, and likely will never be known, given that the Courts do not disclose their in-house business and activities, but it gives cause to wonder and speculate just why these disqualifications occurred, this being a simple ad valorem tax case although of great import to a large number of Georgia citizens, masons and their families, and

including the recipients of the charitable assistance furnished them by the masons.

"It is fair to state that whatever caused the disqualification of so many, it was not of a trifling or light nature, but of some importance. Judges and Justices do not step aside from their sworn duties for insignificant or frivolous reasons. We again ask the Supreme Court to review this question which was first raised in the Briefs before this Court in York Rite Bodies of Freemasonry of Savannah, Et al v. Board of Equalization, 261 Ga. 558, and if this large number of disqualifications leave the appearance of irregularity, prejudice or bias against Appellants that the Court carefully review the entire record.

"e. In event of denial of the Motion for Reconsideration, the Motion to Stay Remittitur be granted."

APPENDIX I
(Verbatum Copy)

IN THE SUPREME COURT OF GEORGIA

BOARD OF EQUALIZATION OF CHATHAM COUNTY Appellees,	)CASE NO.)S93C1650)SUPREME
vs.	)COURT OF
YORK RITE BODIES OF FREEMASONRY OF SAVANNAH) ET AL., Appellants	)GEORGIA)CASE NO.)A93A0710)COURT OF)APPEALS OF)GEORGIA

MOTION TO STAY REMITTITUR: NOTICE OF INTENT TO PETITION THE U.S. SUPREME COURT FOR WRIT OF CERTIORARI

Pursuant to Rule 61 of the Rules of the Supreme Court of the State of Georgia, Appellants make this Motion to Stay Remittitur in the above styled case. Notice is hereby given of the intent of Appellants to petition the United States Supreme Court for a Writ of Certiorari for the correction of alleged errors in event the Motion for Reconsideration of Denial of Certiorari by the Supreme Court of Georgia is denied.

A concise statement of the issues to be presented follows:

1. That Section 1 of Amendment XIV of the Constitution of the United States and Paragraph II of Article I of the Constitution of the State of Georgia, which states among other things that no person shall be denied the equal protection of the laws, was violated by the ruling of the Supreme Court of Georgia in this matter when it ruled that your Appellants are subject to ad valorem taxation as non-charitable entities, while other, truly and clearly non-charitable entities within the same taxing district continue to be afforded exemption from such ad valorem taxes.

2. That Section 1 of Amendment XIV of the Constitution of the United States and Paragraph I of Article I of the Constitution of the State of Georgia, which

states among other things that no person shall be deprived of its liberty or property without due process of law, was violated by the ruling of the Supreme Court of Georgia in this matter when it ignored the findings of fact made by the trial court that your Appellants were such charitable entities as contemplated in the law and fact as being exempt from ad valorem taxation.

3. That the unusually large number of judicial disqualifications in this case evidences a clear predisposition against your Appellants and is violative of the aforesaid equal protection and due process provisions of Amendment XIV of the Constitution of the United States and Article I of the Constitution of the State of Georgia.

This ____day of October 1993.

s/ Gordon B. Smith,
Attorney for
Appellants State Bar
No. 658200

1820 Abercorn Street
P.O. Box 10041
Savannah, Georgia 31412

APPENDIX J

"RULES OF THE SUPREME COURT OF THE STATE OF GEORGIA.

" RULE 61. CERTIORARI FROM UNITED STATES SUPREME COURT-STAY OF REMITTITUR.

"Any party desiring to have the remittitur stayed in this court in order to appeal or seek a writ of certiorari in the United States Supreme Court shall file in this court a motion to stay the remittitur with a concise statement of the issues to be raised on appeal or in the petition for certiorari. Such notice shall be filed at the time of filing a motion for rehearing, or if no motion for rehearing is filed, within the time allowed for the filing of same."

APPENDIX K
(Verbatim Copy)

Court of Appeals

of the State of Georgia

ATLANTA DECEMBER 20, 1990

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A90A0719. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH, GEORGIA ET AL V. BOARD OF EQUALIZATION

UPON CONSIDERATION OF THE MOTION FOR REHEARING FILED ON BEHALF OF APPELLANT IN THE ABOVE STYLED CASE, IT IS HEREBY ORDERED THAT PAGE 6 ATTACHED HERETO BE SUBSTITUTED FOR PAGE 6 OF THE ORIGINAL OPINION DATED NOVEMBER 27, 1990. MOTION FOR REHEARING IS HEREBY DENIED.

Court of Appeals of the
State of Georgia
Clerk's Office, Atlanta,
DEC 20 1990

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written
S/ Victoria McLaughlin, Clerk

APPENDIX L
(Verbatim Copy)

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: OCTOBER 05, 1993

J. Walter Cowart
7220 Waters Road
Savannah, GA 31406

Case No. S93C1650

YORK RITE BODIES OF FREEMASONRY OF SAVANNAH ET AL. V. BOARD OF EQUALIZATION OF CHATHAM COUNTY

COURT OF APPEALS CASE NO. A93A0710

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur, except Benham and Carley, JJ., disqualified

Sincerely,
S/ Sherie M. Welch,
Clerk

APPENDIX M
(Verbatim Copy)

SUPREME COURT OF GEORGIA

ATLANTA, OCTOBER 28, 1993

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Case No. S93C1650

YORK RITE BODIES OF FREEMASONRY OF SAVANNAH ET AL. V.
BOARD OF EQUALIZATION OF CHATHAM COUNTY

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Benham and Carley, JJ., disqualified.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of this court affixed the day and year last above written.
Sherie M. Welch,
Clerk

APPENDIX N

O.C.G.A., Section 48-5-41 (a)(4).

"Property exempt from taxation:

"(a) The following property shall be exempt from all ad valorem property taxes in this state:

"(4) All institutions of purely public charity..."

NOTE BY PETITIONERS: The Code section cited here is in part, and is not the whole code section.

APPENDIX O

O.C.G.A., Section 15-1-9.1 (See delayed effective date note) "REQUESTING JUDICIAL ASSISTANCE FROM OTHER COURTS.

"(a) As used in this Code section, the term:

"(1) 'Administrative judge' means a superior court judge or senior judge of the superior court elected within an administrative district as provided by Code Section 15-5-4.

"(2) 'Chief judge' means the judge most senior in time of service or, if applicable, the judge to whom the administrative duties of a court have been assigned.

"(3) 'Judge' includes, Justices, judges, senior judges, magistrates, and every other such judicial officer of whatever name existing or created.

"(4) 'Part-time judge' means a judge who serves on a continuing or periodic basis but who is permitted by law to devote

time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

"(b) (1) If assistance is needed from a judge outside of the county, a superior court judge of this state or the chief judge of a class of courts other than an appellate court may make a request for judicial assistance in the court served by said requesting judge to the administrative judge of the judicial administrative district in which said requesting judge's court is located, if any of the following circumstances arises:

"(A) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

"(B) A judge of the requesting court is unable to preside because of disability, illness, or absence; or

"(C) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges.

"(2) If assistance is needed from a judge of the same county, the chief judge of any court within such county of this state may make a written request for assistance to the chief judge of any other court within such county, a senior judge of the superior court, a retired judge, or a judge emeritus of any court within the county. The request by the chief judge may be made if one of the following circumstances arises:

"(A) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

"(B) A judge of the requesting court is unable to preside because of disability, illness, or absence; or

"(C) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges.

"(3) When a petition for habeas corpus is filed in a case in which the petitioner is under a sentence of death, the chief judge of the court where the petition is filed may make a request for judicial assistance to the president of The Council of Superior Court Judges of Georgia upon certifying that the business of the court will be impaired unless assistance is obtained. When a request is received, the president of The Council of Superior Court Judges of Georgia shall, under guidelines promulgated by the executive committee of

said council, assign the case to a judge of the circuit other than the circuit in which the conviction and sentence were imposed.

"(c) A chief judge of a requesting court or assisting court shall be presumed to act with the consent of all judges of the court. However, if a judge of a court shall insist, all judges of that court shall vote upon whether to ratify the action taken by the chief judge under this Code section." NOTE BY PETITIONERS: the Code section cited here is in part and is not the complete Code section.

APPENDIX P

O.C.G.A., Section 15-1-8.

"When judge or judicial officer disqualified.

"(a) No judge or Justice of any court, magistrate, nor presiding officer of any inferior judicature or commission shall:

"(1) Sit in any case or proceeding in which he is pecunarily interested;

"(2) Preside, act, or serve in any case or matter when such judge is related by consanguinity or affinity within the sixth degree as computed according to the civil law to any party interested in the result of the case or matter; or

"(3) Sit in any case or proceeding in which he has been of counsel, nor in which he has presided in any inferior judicature, when his ruling or decision is the subject of review, without the consent of all parties in interest. In

all cases in which the presiding judge of the superior court was employed as counsel before his appointment as judge, he shall preside in such cases if the opposite party or counsel agree in writing that he may preside, unless he declines to do so.

"(b) No judge or Justice of any court, magistrate, nor presiding officer of any inferior judicature or commission shall be disqualified from sitting in any case or proceeding because of the fact that he is a policyholder or is related to a policyholder of any mutual insurance company which has no capital stock.

"(c) Nothing in this Code section shall be construed as applying to the qualifications of trial jurors.

"(d) In all cases in which a part-time judge has a conflict because such judge or his or her partner or associate represents a governmental agency or entity, a

subdivision of government, or any other client, the judge will recuse himself or herself or, with the permission of the parties, transfer the case to the state or superior court, but such judge will not otherwise be disqualified or prohibited from serving as attorney for such governmental entities."

APPENDIX Q

RULE 18(c), RULES OF THE COURT OF APPEALS OF THE STATE OF GEORGIA

"(c) Appointment of Superior Court Judges. If in any case seven or more Judges are disqualified or become recused, so that there will not be a full division to decide the case, a full division shall be made up by designating one or more judges of the superior courts to serve."

APPENDIX R
(Verbatim Copy)

CLERK'S OFFICE
SUPREME COURT OF GEORGIA
ATLANTA, GEORGIA

February 7, 1991

Dear Sir:

Case No. S91C0512. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH ET AL V. BOARD OF EQUALIZATION.

The Supreme Court today granted the writ of certiorari in this case. All the Justices concur., except Bell and Benham, JJ., disqualified.

THIS CASE WILL BE ASSIGNED TO THE APRIL 1991 ORAL ARGUMENT CALENDAR.

This Court is particularly concerned with the following:

The Court of Appeals opinion.

Briefs filed in the Court of Appeals are included in the record presented to this Court. Additional briefs are not required but may be submitted.

Very truly yours,

Joline B. Williams,
Clerk

APPENDIX S
(Verbatim Copy)

S91GO512

SUPREME COURT OF GEORGIA

ATLANTA April 11, 1991

The Honorable Supreme Court met pursuant to adjournment.

The following Order was passed:

YORK RITE BODIES OF FREEMASONRY OF SAVANNAH, GEORGIA, et al. v. BOARD OF EQUALIZATION

It appearing that Bell and Benham, JJ., are disqualified in this case, it is ordered that the Honorable Frank M. Hull, Judge, Superior Court, Atlanta Judicial Circuit, and the Honorable Michael Sttodard, Judge, Superior Court, Cobb Judicial Circuit, are hereby designated to act in their places in the case.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.
S/ Joline B. Williams, Clerk

APPENDIX T
(Verbatim Copy)

IN THE SUPERIOR COURT, EASTERN JUDICIAL CIRCUIT, GEORGIA

York Rite Bodies of Freemasonry of of Savannah, et al., Plaintiffs/Appellants,	)	
v.	)	CA Nos.
Board of Equalization of Chatham County, Defendants/Appellees.	)	X85-3895-C X86-0104-C

ORDER

THIS COURT FINDS THAT THE PROPERTIES UNDER APPEAL ARE TAX EXEMPT UNDER OCGA SECTION 48-5-41-(a) (4) ON THE GROUNDS THAT THEY ARE PURELY PUBLIC CHARITIES.

Findings of Fact

1. DeRenne Avenue Lodge

A. There is no evidence that any portion of this property has been used for the purpose of producing private or corporate profits which are distributable to shareholders or other owners of the property.

B. Any and all income from this property has been used solely for charitable purposes.

C. This property is not real estate which is rented, leased or otherwise used for the primary purpose of generating income.

D. This property is used in the operation of charitable institutions.

E. The following charitable activities take place on this property:

1. Administration and applications made for assistance by the Knights of Templar Eye Foundation;

2. Administration, application, collection and dispensation of monies and goods for disaster relief;

3. Collection of monies to support the various charities sponsored nationwide by the York Rite as well as other Masonic organizations including but

not limited to the Shriners' Childrens' Hospital, the Educational Foundation, monies donated to various institutions for the purpose of eye disease research, the Masonic Home in Macon for troubled children,;

4. Administration and operation of the organization which sponsors all of the specific charities stated in 1-3 above.

F. All charity which is dispensed by York Rite and the other charities including Masonic charities it supports are given to members of the public who ask for the assistance. Where no requests for specific assistance is made, frequently donations are given anonymously in the true spirit of charity to anyone who needs assistance without regard for the donee's race, gender, age, religious affiliation or membership in a Masonic organization.

Hence, such charity can truly be classified as purely public charity.

G. The use of the property is exclusively devoted to conduct which benefits the public because aside from the direct charitable work which takes place on the premises, the property is absolutely and entirely used for the purpose of maintaining the organization which furthers the public charities sponsored by York Rite and other Masonic organizations. As the headquarters for this Lodge, it serves as the fundamental base of operations through which the members of this organization go about their good works. Accordingly, this property benefits the entire community as a result of the charitable efforts of its members.

II. Thunderbolt Lodge

A. There is no evidence that any portion of this property has been used for

the purpose of producing private or corporate profits which are distributable to shareholders or other owners of the property.

B. Any and all income from this property has been used solely for charitable purposes.

C. This property is not real estate which is rented, leased or otherwise used for the primary purpose of generating income.

D. This property is used in the operation of charitable institutions.

E. The property is used for the administration, planning and collection of monies and goods which are donated to various charitable causes.

F. More specifically, the property is used for the following charitable purposes:

1. Collection of monies to support the Knights of Templar Eye Foundation;

2. Collection of goods and monies to assist in disaster relief efforts;

3. Collection of goods and monies for Masonic charities including but not limited to the Shriners' Childrens' Hospital, Masonic Home, and Educational Foundation; and,

4. Administration and operation of the organization which sponsors all of the specific charities stated in 1-3 above.

G. All charity which is dispensed by Thunderbolt Lodge and the other charities including Masonic charities it supports are given to members of the public who ask for the assistance. Or where no request for specific assistance is

made, donations are given in the true spirit of charity to anyone who needs assistance without regard for the donee's race, gender, age, religious affiliation or membership in a Masonic organization. As such, it is public charity.

G. The use of the property is exclusively devoted to conduct which benefits the public because aside from the direct charitable work which takes place on the premises, the property is absolutely and entirely used for the purpose of maintaining the organization which furthers the public charities sponsored by York Rite and other Masonic organizations. As the headquarters for this Lodge, it serves as the fundamental base of operations through which the members of this organization go about their good works. Accordingly, this property benefits the entire community as a

result of the charitable efforts of its members.

Conclusions of Law

In determining whether property qualifies as an institution of 'purely public charity' as set forth in OCGA Section 48-5-41(a) (4), three factors must be considered and must coexist. First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits. York Rite Bodes of Freemasonry of Savannah v. Board of Equalization of Chatham County, 261 Ga. 558, 408 S.E.2d 699 (1991). The mere facts that the owner is a non-profit institution, that its charter declares it to be a charitable institution, and that the institution serves a

benevolent purpose do not necessarily lead to the conclusion that the institution is exempted from ad valorem taxation by OCGA Section 48-5-41 (a) (4). Id. citing United Hospitals Service Assoc. v. Fulton County, 216 Ga. 30, 114 S.E.2d 524 (1960). The facts of each case must be viewed as a whole and all of the circumstances surrounding the institution must be considered. York Rite, supra, citing Mu Beta Chapter Chi Omega House Corp. v. Davison, 192 Ga. 124, 14 S.E.2d 744 (1941).

However, 'no matter how high the ideals of an institution, nor how lofty its purposes, in order for it to qualify as a charitable institution for tax exemption under [OCGA Section 48-5-41(a) (4),] It must have the sole purpose and activity of dispensing public charity. York Rite, supra, citing Camp v. Fulton County Medical Society, 219 Ga. 602, 135 S.E.2d

277 (1964), Finally, the applicability of this tax exemption will turn upon a determination of how the property is being used by the institution.' Mere latent ownership of property by an institution of public charity will not entitle [the property] to an exemption....'York Rite, supra, citing Thomas v. Northeast Georgia Council, Inc., Boy Scouts of America, 241 Ga. 291, 244 S.E.2d 842 (1978). merely making real estate available to other public or charitable institutions for their use is not sufficient to qualify for the tax exemption. York Rite, supra, citing Johnson v. Wormsloe Foundation, Inc., 228 Ga. 722, 187 S.E.2d 682 (1972). Instead, the use of the property must be exclusively devoted to conduct that benefits the public by furthering the charitable pursuits of its owner.

As to the third factor the Supreme Court has previously recognized that using property as a headquarters for the administration and dispensation of purely public charity will, under appropriate circumstances, entitle that property to exemption from ad valorem property taxes. York Rite, supra, citing Massenburg v. The Grand Lodge F. & A. M. of the State of Georgia, 81 Ga 212, 7 S.E. 636 (1888). As the Supreme Court so eloquently stated, "The fact that the properties involved in the present case are used as meeting places of the respective appellants does not automatically preclude their use from being exclusively devoted to charitable pursuits; nor does the fact that the properties are used primarily by members of the Masons necessarily preclude them from being institutions for the dispensation of purely public charity." York Rite, supra. In

footnote four of York Rite, the Supreme Court noted that each individual lodge must establish the existence of all three factors as well as compliance with OCGA Section 48-5-41(c) and (d) to qualify for the ad valorem tax exemption.

Based upon the evidence present to the Court, this Court is of the opinion that these two properties meet all of the criteria

required in OCGA Section 48-5-41(a) (4), (c) and (d) to render them exempt from ad valorem taxes imposed by Chatham County for the years under appeal. Specifically, each property is owned by an institution which is devoted entirely to charitable purposes. Each property operated by its respective institution whose charitable pursuits are for the public. And,the use of both properties is exclusively and entirely devoted to charitable pursuits. With

respect to each property, these three factors co-exist. Accordingly, this Court is of the opinion that the Plaintiffs/Appellees have met all of the test required in York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County, 261 Ga. 558, 408 S.E.2d 699. Therefore the property is exempt as a matter of law pursuant to OCGA Section 48-5-41.

SO ORDERED THIS 2nd DAY OF Oct. 1992.
s/ Frank S. Cheatham Jr.
Chief Judge, Superior Court

APPENDIX U

York Rite Bodies of Freemasonry of Savannah, et al, Petitioner	)
vs.	)
Board of Equalization of Chatham County, et al. Respondents	)

IN RE: Affidavit of Grand Secretary, Grand Lodge of Georgia, F&AM for use in Application for Certiorari by Petitioners to the United States Supreme Court in the above named case.

AFFIDAVIT

This is to certify that I, Ted H. Hendon, Grand Secretary of the Grand Lodge of Georgia, Free and Accepted Masons, being duly sworn, deposes and says that upon request of counsel for the York Rite Bodies of Savannah, et al.

1. That I am the custodian of the records of the Grand Lodge of

Georgia, including the roster of the present and past members of all the lodges of Masons in Georgia.

2. That I have made a thorough search of such membership records in search of the following named, whose names were furnished me by counsel for petitioner herein.

3. I find the following named are now or have been members of Masonic Lodges in Georgia:

1. GEORGE H. CARLEY (Pythagorus Lodge No. 41, Decatur, Ga.)

2. BRASWELL D. DEEN JR. (Bacon Lodge No. 56, Alma, Ga., Dimit 1978)

3. WILLIAM LEROY MCMURRAY JR. (Washington Lodge No. 19, Cuthbert, Ga., Dimit 1964)

4. HAROLD R. BANKE (Forest Park No. 399, Forest Park, Ga. Fellowcraft)

5. JOHN W. SOGNIER (Landrum Lodge No. 48, Savannah, Ga.)

6. MARION T. POPE JR. (Canton Lodge No. 77, Canton, Ga., Dimit 1989)

7. A. W. BIRDSONG (Union No. 28, LaGrange, Ga. Entered Apprentice only)

4. I find the following named are not, nor have they ever been members of any Masonic Lodge in Georgia:

1. CLARENCE COOPER
2. DOROTHY TOTH BEASLEY
3. WILLIAM J. SMITH
4. K. DAWSON JACKSON
5. THOMAS DAY WILCOX
6. ROBERT G. WALTHER
7. DANIEL M. COURSEY JR.
8. ARNOLD SHULMAN
9. GARY B. ANDREWS
10. EDWARD H. JOHNSON
11. G. ALAN BLACKBURN
12. J. D. SMITH
13. FRANK M. HULL
14. MICHAEL STODDARD
15. HAROLD G. CLARKE
16. WILLIS B. HUNT JR.
17. NORMAN S. FLETCHER
18. LEAH SEARS-COLLINS
19. CAROL W. HUNSTEIN

BEST AVAI

5. That all the Masonic Lodges of Georgia make monthly reports to my office, giving full names of new members, deaths, dimits and all other status changes in the individual lodges.

I further certify the foregoing is true and correct; that I am not kin or council to any of the parties hereto and have no pecuniary interest in the outcome of this case.

GRAND LODGE OF GEORGIA F. & A.M.

Ted H. Hendon

TED H. HENDON
Grand Secretary
Grand Lodge of Georgia

Sworn to and Subscribed before me this 7th day of January 1994.

Joyce M. Price

Notary Public, Bibb County, GA
My Commission expires: Sept. 17, 1996

LABLE COPY

York Rite Bodies of Freemasonry of Savannah, et al., Petitioners	)
vs.	)
Board of Equalization of Chatham County, et al., Respondents	)

AFFIDAVIT

IN RE: Affidavit of J. Walter Cowart, Counsel of Record for Petitioners for use in Application for Certiorari by Petitioners to the United States Supreme Court in the above named case.

I, J. WALTER COWART, Counsel of Record for Appellants, hereby certify that I verily believe that this case is one which is contemplated by 28 U.S.C.A. Sec. 1257 and Rules of the United States Supreme Court; that the case is of great importance, and worthy of review and reversal, not only because it involves the question of exemption from ad valorem taxation under a valid statute of Georgia, but because of denial of Constitutional

rights involving a large number of citizens, which denial arose during and in the course of this case, and in the official acts of the Appellate Courts of Georgia, that of systematically disqualifying all court members who were masonically connected and replacing them with non-masons. The parties involved were given no notice of the intended action or opportunity to object.

The Court of Appeals of Georgia has nine (9) regular Judges, duly elected, qualified and serving, usually in panels of three judges each. The Supreme Court of Georgia has seven (7) regular Justices, duly elected, qualified and acting. Three (3) Justices have been replaced on the Supreme Court since this case first reached appeals stage.

I further certify that during the year 1990, when this case was transferred there

by the Supreme Court of Georgia on January 11, 1990, the regular members of the Court of Appeals of Georgia were: George H. Carley, Braswell D. Deen Jr., William LeRoy McMurray Jr., Harold R. Banke, A.W. Birdsong, John W. Sognier, Marion T. Pope Jr., Dorothy Toth Beasley, and Clarence Cooper. The above named were still regular members on November 6 and November 27, 1990 (Appx. A), when the first judgment in this case was rendered by the Court of Appeals of Georgia against petitioners, with six of the regular judges being disqualified and replaced with five Superior Court Judges and one Senior Appeals Court Judge, and with three judges dissenting.

I further certify that the regular members of the Court of Appeals of Georgia when this case was appealed by the Tax Assessor and judgment rendered on June 1, 1993, were: William LeRoy McMurray Jr.,

Dorothy Toth Beasley, Clarence Cooper, Edward H. Johnson, G. Alan Blackburn, Marion T. Pope, A. W. Birdsong, Gary B. Andrews, and J. D. Smith.

I further certify that the regular members being elected or appointed, serving as Justices on the Supreme Court of Georgia as of the January Term 1993, and on October 5 and October 27, 1993, when Certiorari was denied and also Motion for Reconsideration of the Denial were: Harold G. Clarke, Willis B. Hunt Jr., Robert Benham, Norman Fletcher, Leah Sears-Collins, Carol W. Hunstein, and George H. Carley.

I certify the above to be true and correct, this 10th day of January, 1994.

J. Walter Cowart

Sworn to and subscribed before me this 10th day of January, 1994.

Betty O'Neal
Notary Public, Chatham County, Ga.

APPENDIX W
(Verbatim copy)

In the Supreme Court of Georgia

Decided: SEP 20 1991

S91G05L2. YORK RITE BODIES OF FREEMASONRY OF SAVANNAH et al. v. BOARD OF EQUALIZATION OF CHATHAM COUNTY et al.

FLETCHER, Justice

We granted a writ of certiorari to the Court of Appeals to consider whether the properties of two Masonic organizations located in Chatham County are entitled to exemption from ad valorem taxation under OCGA Section 48-5-41 (a) (4) as institutions of "purely public charity." York Rite Bodies of Freemasonry of Savannah et al. v. Board of Equalization, 198 Ga. App. 147 (401 SE2d 30) (1990). In the 2nd division of the York Rite decision, supra, a majority of the Court of Appeals held that the properties were not entitled to such exemption because they:

are used as meeting places, and are not used for the actual charitable purposes for which the Masons were established. Also, the properties are used only by members of the respective lodges and are therefor not open to the 'public.' York Rite, 198 Ga. App. at 149.

For the reasons which follow, we reverse such holding.

1. Beginning with Georgia's Constitution of 1877, there has been constitutional authority for the General Assembly to enact legislation exempting from taxation, with certain restrictions, "all institutions of purely public charity" 1 and since 1882 there has been legislation providing for such an exemption.

2. In determining whether property qualifies as an institution of "purely public charity" as set forth in OCGA Section 48-5-41 (a) (4), three factors must be considered and must coexist. First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must

be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits.

(a) In determining whether the owner is an institution devoted entirely to charitable pursuits, it must be remembered that the mere facts that the owner is a non-profit institution, that its charter declares it to be a charitable institution, and that the institution serves a benevolent purpose do not necessarily lead to the conclusion that the institution is exempted from ad valorem taxation by OCGA Section 48-5-41 (a) (4). United Hospitals Service Assoc. V. Fulton County, 216 Ga. 30,33 (114 SE2d 524 (1960). While all of those should be considered, no one of them will be conclusive. Instead, the facts of each case must be viewed as a whole and all of the circumstances surrounding the

institution must be considered. Mu Beta Chapter Chi Omega House Corp. v. Davison, 192 Ga. 124, 128 (14 SE2d 744) (1941).

(b) As to the second factor, this court has often noted that "[t]here are infinite charities that deserve the plaudits of all mankind...." United Hospitals, 216 Ga. at 32. However, "[n]o matter how high the ideals of an institution, nor how lofty its purposes, in order for it to qualify as a charitable institution for tax exemption under [OCGA Section 48-5-41 (a) (4),] it must have the sole purpose and activity of dispensing public charity. Camp v. Fulton County Medical Society, 219 Ga. 602, 605 (135 SE2d 277) (1964), Emphasis supplied.)

(c) Finally, the applicability of this tax exemption will turn upon a determination of how the property is being used by the institution. "Mere latent

ownership of property by an institution of public charity will not entitle [the property] to an exemption...." Thomas v. Northeast Georgia Council, Inc., Boy Scouts of America, 241 Ga. 291, 293 (244 SE2d 842) (1978). Nor will "[m]erely making real estate available to other public or charitable institutions for their use [be] sufficient to qualify for the tax exemption." Johnson v. Wormsloe Foundation, Inc., 228 Ga. 722, 727 (187 SE2d 682) (1972). Instead, the use of the property must be exclusively devoted to conduct that benefits the public by furthering the charitable pursuits of its owner.

3. (a) Because of the procedural posture of these actions in the trial court, an evidentiary hearing has not yet been held as to either appellant's claim of entitlement to OCGA Section 48-5-41 (a) (4)'s ad valorem tax exemption. The case

must be remanded to the trial court so that such an evidentiary hearing can be held. Both appellants will have the burden of proving entitlement to the tax exemption based upon the coexistence of the three factors set forth in Division 1. 3

(b) If the coexistence of the first two factors can be established, appellants will still have to prove that the use of their respective properties is exclusively devoted to furthering each appellant's charitable pursuits. As to this third factor, we have previously recognized that using property as a headquarters for the administration and dispensation of purely public charity will, under appropriate circumstances, entitle that property to exemption from ad valorem property taxes. Massenburg v. The Grand Lodge F. & A.M. of the State of Georgia, 81 Ga. 212, 218 (7 SE 636 (1988). 4

The fact that the properties involved in the present case are used as meeting places of the respective appellants does not automatically preclude their use from being exclusively devoted to charitable pursuits nor does the fact that the properties are used primarily by members of the Masons necessarily preclude them from being institutions for the dispensation of purely public charity. If appellants can establish that the use of their respective properties is exclusively for the administration and dispensation of public charity, then they will have established the third factor.

Judgment reversed as to Divisions 2. Clark, C. J., Smith, P. J., Weltner, Hunt, Fletcher, JJ., Judge Frank M. Hull and Judge Michael Stoddard concur. Bell and Beham, JJ., Disqualified.

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1 1877 Ga. Const., Art. VII, Section II, Par. II, 1945 Ga. Const., Art. VII, Section I, Par. IV: 1976 Ga. Const., Art. VII, Section I, Par. IV; 1983 Ga. Const., Art. VII, Section II, Para. IV.

2 Code of 1882, Section 798; Civil Code of 1895, Section 762; Civil Code of 1910, Section 998, Code of 1933, Section 92-201 and as amended in 1978, Section 91A-1102; and OCGA Section 48-5-41 (a) (4).

3 We note that the requirements of OCGA Section 48-5-41 (c) and (d) must also be complied with by an institution that qualifies under subsection (a) (4) as an institution of purely public charity in order to entitle that institution to exemption from ad valorem taxation.

4 In the Massenburg decision, supra, this court did not decide the question of "whether masonic institutions...are institutions of purely or even of public charity...." Massenburg 81 Ga. at 216. Accordingly the Massenburg decision does not stand for the proposition that all Masonic lodges are institutions devoted entirely to charitable pursuits, nor does it stand for the proposition that the charitable pursuits of all Masonic lodges or similar institutions are for the benefit of the public. Each individual lodge must establish the existence of all three of the factors set forth in this opinion, as well as compliance with subsections (c) and (d) of OCGA Section 48-5-41, in order to qualify for the ad valorem tax exemption set forth in subsection (a) (4) of that code section.

APPENDIX X

Amendment XIV, Section I, Constitution of the United States. "...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
28 U.S.C.A. Section 1257.

Article I, Section I, Paragraph I, Constitution of Georgia. "No person shall be deprived of life, liberty, or property except by due process of law."

Article I, Section I, Paragraph II, Constitution of Georgia. "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws."

STATE OF GEORGIA)
) CERTIFICATE OF SERVICE
COUNTY OF CHATHAM)

This is to certify that I have this day served opposing counsel in the foregoing matter with a copy of this Appendix to Petition For Writ of Certiorari to the Supreme Court of Georgia and the Court of Appeals of Georgia by depositing same in the United States Mail in a properly addressed envelope with adequate postage thereon and addressed to:

R. Stephen Sims, Esq.
Barrow, Sims, Morrow & Lee, P.C.
Attorneys at Law
P.O. Box 8185
Savannah, Georgia 31412
Telephone Number; (912) 234-7215

This 12 day of February, 1994.

J. Walter Cowart

7220 Waters Road
Savannah, Georgia 31406
(912) 355-5111

FILED
APR 11 1994
OFFICE OF THE CLERK

No. 93-1423

In The

Supreme Court of the United States

October Term, 1993

YORK RITE BODIES OF FREEMASONRY OF SAVANNAH, *et al.*,

Petitioner,

vs.

BOARD OF EQUALIZATION OF CHATHAM COUNTY, *et al.*,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia and the Court of Appeals of Georgia

RESPONDENTS' BRIEF IN OPPOSITION

R. STEPHEN SIMS
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Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

QUESTIONS PRESENTED

I. Does this case meet the qualifications for the grant of certiorari when there is no evidence that the recusal or disqualification of any appellate judge was based on the fact that the judge was or may have been a member of the Masonic organization?

II. Does the exercise of the power of recusal or disqualification by individual members of a state appellate court, either in accordance with state law or the judicial canons of ethics, raise any error of constitutional proportions?

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I. This case does not meet the qualifications for the grant of certiorari as it contains no evidence that the recusal or disqualification of any appellate judge was based on the fact that the judge was or may have been a member of the Masonic organization. 4

II. Exercise of the power of recusal or disqualification by individual members of a state appellate court, either in accordance with state law or the judicial canons of ethics, does not raise any error of constitutional proportions. 5

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No. 93-1423

In The

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October Term, 1993

YORK RITE BODIES OF FREEMASONRY OF SAVANNAH, *et al.*,

Petitioner,

vs.

BOARD OF EQUALIZATION OF CHATHAM COUNTY, *et al.*,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia and the Court of Appeals of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

Respondent in the above-styled action respectfully opposes the petition for writ of certiorari to the Supreme Court of Georgia and the Georgia Court of Appeals. Contrary to the arguments of Petitioner, there is no evidence in the record below that the disqualification or recusal of state appellate judges was based upon their membership in the Masonic organization. Moreover, the record fails to show any specific grounds upon which the recusals were based so that Petitioner's argument that they were in violation of statute is without merit. Accordingly, Respondent requests that the petition be denied.

STATEMENT OF THE CASE

This action arose out of the denial of an *ad valorem* property tax exemption for Masonically owned property in Savannah, Georgia. The trial court's initial ruling in favor of the Respondent was affirmed by the Georgia Court of Appeals in *York Rite Bodies of Freemasonry of Savannah v. Board of Equalization,* 198 Ga. App. 147, 401 S.E. 2d 30 (1990) (*York Rite I*). In that opinion, the court held that since the Petitioner's properties were used as meeting places and only by members of the organization, they were not exclusively dedicated to public charity. *Id.* at 149, 401 S.E. 2d at 32. As Petitioner has noted, six of the nine judges were listed as disqualified although the reasons for the disqualification was never explained by the court and no motion for disqualification was filed by any party.

The Supreme Court of Georgia reversed *York Rite I* in *York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County,* 261 Ga. 558, 408 S.E. 2d 699 (1991). Instead of ruling for the Petitioner, however, the case was remanded to the trial court for an evidentiary hearing. Again, as Petitioner has noted, two justices were disqualified and replaced by Superior Court judges.

After a hearing, the trial court entered its findings of fact and conclusions of law in favor of Petitioner, granting the tax exemption. That order was appealed by Respondent. In *Board of Equalization v. York Rite Bodies of Freemasonry of Savannah,* 209 Ga. App. 359, 433 S.E. 2d 299 (1993) (*York Rite II*), the Court of Appeals reversed the trial court, holding that there was ample evidence in the record to support a finding that the

> Masons devote a *substantial* amount of time and money to charitable pursuits which benefit the public. There [was], however, no evidence

> that the Masons are devoted *entirely* to such pursuits or that the lodges in question are devoted exclusively to those pursuits. On the contrary, evidence in the record shows that the Masonic organization devotes numerous resources to non-charitable pursuits which benefit only its members.

Id., 433 S.E. 2d at 300 (emphasis in original). There were no disqualifications or recusals on this panel. The subsequent petition for certiorari to the Supreme Court of Georgia was denied.

A. Response to Petitioner's Statement of the Case.

The jurisdictional statement and statement of the case in Petitioner's brief contains argumentative, conclusory and scandalous matter which should not be considered by this Court.

Both in the questions presented and jurisdictional statement, p. 2, Petitioner argues that there was a deliberate manipulation of court members to achieve a pre-determined result. This impugns the integrity of both state courts.

Petitioner argues that a personal vendetta or motive on the part of Respondent was allegedly recognized in the trial court's order when there is no such finding in that order or the record. Petitioner's Brief, pp. 8, 36.

Petitioner assumes or speculates as to the reason for disqualification or recusal of the various judges when there are no grounds given in any of the orders cited by Petitioner. Furthermore, Petitioner is improperly attempting to bolster or supplement the record in this case by the submission of affidavits from counsel and another witness, which information appears nowhere else in the case. Petitioner's Brief, pp. 11-16; Appendix, pp. 84-91.

SUMMARY OF ARGUMENT

Petitioner argues that the unusually large number of disqualifications on the Supreme Court of Georgia and Georgia Court of Appeals are evidence of a deliberate manipulation to insure a result favorable to Respondent, thereby violating Petitioner's due process rights. However, contrary to these assertions, there is no evidence that any of the disqualifications (which were unsolicited by any motion from Respondent) were the result of any Masonic affiliation of a judge, or precipitated by any anti-Masonic prejudice. In fact, the disqualifications, if they were done for reasons of Masonic affiliation, were completely proper under the Code of Judicial Conduct.

REASONS FOR DENYING THE WRIT

I.

THIS CASE DOES NOT MEET THE QUALIFICATIONS FOR THE GRANT OF CERTIORARI AS IT CONTAINS NO EVIDENCE THAT THE RECUSAL OR DISQUALIFICATION OF ANY APPELLATE JUDGE WAS BASED ON THE FACT THAT THE JUDGE WAS OR MAY HAVE BEEN A MEMBER OF THE MASONIC ORGANIZATION.

Petitioner questions the power and duty of a judge to disqualify or recuse himself on his own motion. When there is no motion for disqualification made by an interested party, the reasons for such self-disqualification, as in this case, may remain unknown. There is no evidence in the record why any of these appellate judges chose to remove themselves from the consideration of this case at various times.

In addition, in spite of the perceived systematic exclusion of judges presumably favorable to Petitioner, neither of the opinions

complained of (*York Rite I* and 261 Ga. 559) constituted a final ruling to Petitioner's detriment. *Injuria absque damno.* Other than the fact that it failed to prevail on the merits, Petitioner shows nothing evidencing support of its claim of constitutional violations.

II.

EXERCISE OF THE POWER OF RECUSAL OR DISQUALIFICATION BY INDIVIDUAL MEMBERS OF A STATE APPELLATE COURT, EITHER IN ACCORDANCE WITH STATE LAW OR THE JUDICIAL CANONS OF ETHICS, DOES NOT RAISE ANY ERROR OF CONSTITUTIONAL PROPORTIONS.

To accept Petitioner's argument requires the acceptance of a great many assumptions:

(1) that the disqualified judges were Masons;

(2) that the disqualifications were due to that relationship;

(3) that the disqualifications were orchestrated by some unknown entity because of anti-Masonic prejudice;

(4) that if number (3) is incorrect, then the orchestration occurred due to a fear of favoritism by the Masonic judges;

(5) that this constitutes disqualification because of bias or prejudice;

(6) that bias and prejudice are not statutory grounds for disqualification;

(7) that the disqualifications are therefore illegal.

Until the adoption of the Code of Judicial Conduct (231 Ga. A-1, eff. Jan. 1, 1974, rev. eff. Jan. 1, 1994), bias and prejudice were not considered grounds for disqualification. O.C.G.A. § 15-1-8; *Stevenson v. Stevenson,* 222 Ga. 47, 148 S.E. 2d 388 (1966). The Code mandates that a judge should disqualify himself if there is any appearance or suggestion of impropriety, or in any proceeding in which the judge's impartiality might reasonably be questioned. Canon 2, Canon 3.E(1)(a) (formerly 3.C.(1)(a)); *Savage v. Savage*, 234 Ga. 853, 218 S.E. 2d 568 (1975). The similarities of Canons 2 and 3 to 28 U.S.C. §§ 144 and 455 were noted in *Pope v. State,* 257 Ga. 32, 354 S.E. 2d 429 (1987). The court there cited with approval federal opinions interpreting these statutes as "self-enforcing." Assuming *arguendo,* that the disqualified jurists were Masons, recusal would be the ethical and proper action under the Code.

The case authority cited by Petitioner either pre-dates the adoption of the Code of Judicial Conduct or are procedurally distinguishable from the case at bar because they deal with motions to recuse made by a party. This procedural distinction is significant because of the "self-enforcement" nature of the Canons. "[W]here bias or prejudice of a judge has been shown concerning a party, it is error for the judge to hear and decide the case," *Savage, supra* at 856, 218 S.E. 2d at 571, although bias, without pecuniary interest, is still not a legal ground for disqualification. *Mitchell v. State*, 165 Ga. App. 258, 300 S.E. 2d 5 (1983). *Cf., Mann v. State*, 154 Ga. App. 677, 269 S.E. 2d 863 (1980) (bias toward party's attorney insufficient ground for disqualification).

In spite of the holding in *Savage, supra,* Georgia courts continue to utilize the statutory standard of O.C.G.A. § 15-1-8 when ruling on *motions* to disqualify. In affirming the denial of a motion to disqualify based upon the appearance of impropriety, the court of appeals found no legal error. However, "[t]his is not to say that Canon 2 or Canon 3(C)(1) was violated, but rather that we do not address their application because they are not the legal test."

Brannen v. Prince, 204 Ga. App. 866, 868, 421 S.E. 2d 76, 78 (1992). When the recusal is self-generated, reliance on the Canons is expected. However, when one party is attempting to require the removal of the presiding judge, the stricter statutory standards apply.

Therefore, in view of the fact that Respondent did not move for the disqualification of any judge, there was no irregularity or illegality in the disqualifications here.

Petitioner implicitly argues that it is entitled to have its case heard and decided by a court primarily composed of Masons. In light of Petitioner's unusual argument, Respondent can cite no direct authority because, as noted above, most appeals involving disqualification or recusal are usually the result of the denial of a motion made by a party. Nevertheless, in the interest of equity and fairness, it seems logical that parties are entitled to have their case heard by impartial, neutral judges (or at least those as neutral as humanly possible). This is the goal of Canon 3; Petitioner's argument ignores and subverts that very principle.

It should be obvious that this is nothing more than a collateral attack since Petitioner failed to win its case below on the merits. If the integrity and independence of the judiciary is to be maintained, this type of appeal cannot be allowed.

CONCLUSION

A petition for certiorari should be granted only when there are special and important reasons existing. U.S. Sup. Ct. Rule 10.1

There is no evidence in the record which supports Petitioner's argument that anti-Masonic prejudice disqualified any judge from considering this appeal below. Evidence is also lacking as to any Masonic connection between those judges who declined to hear

this case and the reason for that self-imposed disqualification. Finally, Petitioner has failed to show a violation of any constitutional rights by either of the state appellate courts.

Respondent respectfully urges the Court to deny the petition.

Respectfully submitted,

R. STEPHEN SIMS
Counsel of Record
111 West Congress Street
Savannah, Georgia 31401
(912) 234-7215